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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRAD R. JOHNSON,

Plaintiff

v.

FRANCHISE TAX BOARD, STATE OF CALIFORNIA,

BILL LOCKYER,

DENNIS L. STOUT,

COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA,

Respondents

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

---

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Questions Presented for Review are categorized by court and nature of issue and are presented as follows.

In the Central District of California
Denied Opportunity to File Amended Complaint as well as Notice and an Opportunity to be Heard Before Submitting his Recommendation in a Sua Sponte Determination under Rule 12(b)(6)

1. Whether Magistrate Judge Andrew J. Wistrich in the Central District of California erred in denying consideration of Plaintiff's Affidavit [a prior submission duly filed, incorporated by reference into Plaintiff's First Amended Complaint and reflecting the factual basis of Plaintiff's claims] because it was not directly attached, while contemporaneously denying Plaintiff's motion to amend said Complaint as well as notice and an opportunity to be heard before submitting his recommendation?

In the Central District of Illinois
Transfer under Section 1406(a) from CD IL to CD CA

2. WHETHER the Ninth Circuit Court of Appeals erred in employing an "abuse of discretion" standard (rather than a De Novo standard) in reviewing the transfer of the instant case pursuant to 28 U.S.C. Section 1406(a) from the Central District of Illinois to the Central District of California?

3. WHETHER it was clear legal error under **28 U.S.C. Section 1391(b)(2)** [within the context of a *sua sponte transfer* under **28 U.S.C. Section 1406(a)**] for the Central District of Illinois to find that venue

was improper (i.e., that the District Court was not a judicial district either (i) within which a substantial part of the events or omissions giving rise to the claim occurred or (ii) within which a substantial part of property, the subject of the action, is situated)?

Pre-Judgment Child Support Procedures

4. Whether Judge Gary L. Taylor in the Central District of California and the Ninth Circuit Court of Appeals erred in dismissing Plaintiff's constitutional due process claims under Section 1983 for lack of jurisdiction because it cannot be determined at the pleading stage that, as a matter of law under the Rooker-Feldman Doctrine, the district court had no jurisdiction, where, under the facts of the instant case, the judgment was a default judgment for which plaintiff had no notice or opportunity to be heard?

Post-Judgment, Pre-deprivation, Child Support Enforcement Procedures

5. Whether Judge Gary L. Taylor and the Ninth Circuit Court of Appeals erred in dismissing Plaintiff's constitutional procedural due process claims under Section 1983, where, under the facts of the instant case, a child support obligation was established by default judgment without notice or opportunity to be heard, because it cannot be determined at the pleading stage, as a matter of law, that the post-judgment, pre-deprivation procedures actually employed to enforce such child support obligation did, in fact, satisfy U.S. constitutional procedural due process requirements?

6. Whether adherence to the requirement of Cal Rev & Tax Code § 19271(a)(3) ["At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement."] is a procedural due process requirement in the instant case?

7. Does *Griffins* limit *Endicott*'s holding that notice and hearing on the underlying judgment serves as constructive notice of all that will follow?

Absolute Prosecutorial Immunity

8. Whether Judge Gary L. Taylor erred in holding that Stout is entitled to Absolute Prosecutorial Immunity because it cannot be determined at the pleading stage, as a matter of law, that Stout enjoys Absolute Prosecutorial Immunity from plaintiff's Section 1983 claims for money damages since, under the facts of the instant case, intentionally failing to (i) diligently determine Plaintiff's last known address and (2) attest to proper notice are non-advocatory, administrative functions?

STATEMENT OF PARTIES

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Seventh Circuit.

CORPORATE DISCLOSURE STATEMENT

There is no parent or subsidiary company to be listed, as there exists no party who is a corporation.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Statement of Parties iii

Corporate Disclosure Statement iv

Table of Contents v

Opinions Below 1

Statement of Jurisdiction 2

Statement of Case 2

Reasons for Granting Writ 12

Conclusion 29

OPINIONS BELOW

United States Court of Appeals for the Ninth Circuit

1. The Memorandum of the United States Court of Appeals for the Ninth Circuit filed on April 21, 2003 affirming the holdings of the United States District Court for the Central District of California, whose affirming judgment is here sought to be reviewed, is unreported and is printed in Appendix A, page A-37.

2. The Order of the United States Court of Appeals for the Ninth Circuit filed July 1, 2003 denying Plaintiff-Appellant's *Petition for Rehearing* is unreported and is printed in Appendix A, page A-40.

United States District Court for the Central District of Illinois, Danville/Urbana Division

3. The Report and Recommendation of United States Magistrate Judge, David G. Bernthal, filed August 28, 2001 is unreported and is printed in Appendix A, page A-5.

4. The District Court's Order filed September 19, 2001 approving the Report and Recommendation of United States Magistrate Judge is unreported and is printed in Appendix A, page A-11.

5. The District Court's Order filed October 30, 2001 granting Plaintiff's motion for reconsideration is unreported and is printed in Appendix A, page A-17.

United States District Court for the Central District of California, Eastern Division

6. The Report and Recommendation of United States Magistrate Judge, Andrew J. Wistrich, filed May 22, 2002 is unreported and is printed in Appendix A, page A-20.

7. The District Court's Order filed August 2, 2002 approving the Report and Recommendation of United States Magistrate Judge is unreported and is printed in Appendix A, page A-36.

STATEMENT OF JURISDICTION

The Memorandum of the United States Court of Appeals for the Ninth Circuit (Appendix A, page A-37), affirming the holdings of the United States District Court for the Central District of California, was filed on April 21, 2003. A timely petition for rehearing was denied on July 1, 2003 (Appendix A, page A-40).

The jurisdiction of the Court is invoked under U.S. Const. Art. III and 28 U.S.C. Section 1254 on review of a final judgment of a United States Court of Appeals.

STATEMENT OF THE CASE

Description

This case can be described as a civil rights claim for money damages (actual and punitive) and injunctive and declaratory relief under the United States Constitution, particularly pursuant to the provisions of the Fourteenth Amendment to the Constitution of the United States, and under federal law, particularly pursuant to Title 42 of the United States Code, Section 1983 and Title 28 of the United States Code, Sections 2201 and 2202 for the purpose of

enjoining said Defendants-Respondents from enforcing Sections 19271 of the California Revenue and Taxation Code on the basis that the conduct, policies and practices of Defendants-Respondents (as identified in the Affidavits of Plaintiff and Viki Hollander printed in Appendix A, pages A-41 & 57, respectively) have violated (1) Federal Child Support Enforcement Provisions (Appendix A, pages A-67 to A-75), (2) California Child Support Enforcement Plan Provisions (Appendix A, pages A-76 to A-92), and (3) Plaintiff-Appellant's U.S. Constitutional Guarantee of Procedural Fairness flowing from the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution [*Plaintiff's First Amended Complaint*], where Plaintiff-Petitioner's prayer for relief sought a "preliminary and permanent injunction enjoining defendants (Stout and Lockyer) and employees/agents/officers of defendants (Franchise Tax Board, Attorney General's Office, San Bernardino, and District Attorney's Office), their agents, employees, and those acting in concert with them, from enforcing Sections 19271 of the California Revenue and Taxation Code and collecting on any amount of child support arising from a 1986 Multnomah County, State of Oregon child support order in which Plaintiff-Petitioner is the obligor and Viki S. Hollander is the obligee." [*Plaintiff's First Amended Complaint*]. Jurisdiction in the United States District Court is based on federal question pursuant to 28 U.S.C. Section 1343.

In the instant case, it is alleged that public officials of the State of California and the County of San Bernardino have intentionally, wantonly, and with malice of forethought unjustly exceeded their authority and power in their unlawful and unconstitutional efforts to collect nonexistent amounts of "delinquent child support obligation" for the purpose of obtaining increased federal incentive grant dollars for their child support enforcement efforts. Here, in a nutshell, employees of San Bernardino County, Child Support Enforcement and the State of California intentionally used the judicial system and the

long and powerful arm of the State of California (through the Franchise Tax Board) to intentionally victimize Plaintiff-Appellant by taking the property of Plaintiff, a resident of the State of Illinois, without due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, where the motivation for such acts was the resultant federal incentive grant subsidies received by the County of San Bernardino and the State of California for their child support enforcement efforts. **This case dramatically (and tragically) demonstrates how legitimate national policy concerns for child support enforcement, resulting in federal incentive grant subsidies for state and county child support enforcement efforts, have led to child support enforcement efforts that violate an obligor's due process under the Fourteenth Amendment to the Constitution of the United States.**

Facts*

*** From the Affidavits of Plaintiff and Viki Hollander printed in Appendix A, pages A-41 & 57, respectively**

About December 1999, employees of San Bernardino County (Office of the District Attorney), State of California [including Defendant Stout] in a San Bernardino County Court "IV-D Case" registered a foreign 1986 Multnomah County, State of Oregon Child Support Order, for which Viki S. Hollander was the obligee and Plaintiff was the obligor. This act was known by such employees of San Bernardino County (Office of the District Attorney), State of California [including Defendant Stout]:

a. to have been accomplished without the notice, authorization, approval, permission, or acquiescence of either the obligor (Plaintiff) [Affidavit of Plaintiff, A-41] or obligee (Viki S. Hollander) [Affidavit of Viki S. Hollander, A-57], which resulted in a default judgment against Plaintiff and
b. to have exceeded the authority and power of such employees of San Bernardino County (Office of the

District Attorney), since in "IV-D Cases" the District Attorney does not represent the interests of either party and Viki Hollander had neither requested nor authorized such action [Affidavit of Viki S. Hollander, A-57].

Since December 1999, Plaintiff has been a target and victim of Defendants' unconstitutional, criminal and tortious schemes and artifices to defraud Plaintiff of his property, described as follows.

1. **On July 7, 2000,** *without any actual or constructive notice to Plaintiff,* the State of California, Franchise Tax Board, Child Support Collections issued an ORDER TO WITHHOLD (any credits or payments owing to Brad R. Johnson) under authorization of Sections 19271 and 18670 of the California Revenue and Taxation Code to U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250 of DEBTOR, Brad R. Johnson. This ORDER TO WITHHOLD was forwarded to Plaintiff in Kankakee, Illinois by U.S. Bank and received by Plaintiff on July 15, 2000. It is important to note that the ORDER TO WITHHOLD had a Milledgeville, Georgia address, which was 7 years old. [Affidavit of Plaintiff, A-41].
2. **On July 17, 2000,** Brad R. Johnson informed employees of San Bernardino County (Office of the District Attorney, Child Support Enforcement) and employees of the Franchise Tax Board, Child Support Collections by telephonic communication that in fact no delinquent child support amount existed (or ever existed) and that they had made a terrible mistake. **Further, Plaintiff informed employees of San Bernardino County (Office of the District Attorney, Child Support Enforcement) of his current address in Kankakee, Illinois.** These employees told Plaintiff that Plaintiff would need to prove to them (in the form of cancelled

checks) that he had paid his child support. [Affidavit of Plaintiff, A-41].

3. **On July 28, 2000,** Viki S. Hollander informed Employees of San Bernardino County (Office of the District Attorney, Child Support Enforcement) by E-mail and telephonic communication that no delinquent child support amount existed (or ever existed) and that they had made a terrible mistake. [Affidavit of Viki S. Hollander, A-57].
4. **On July 31, 2000,** Plaintiff sent a Demand Letter dated July 30, 2000 to (i) the Franchise Tax Board, Child Support Collections by FedEx Priority Overnight (5574782625) and (ii) the San Bernardino District Attorney's Office - Child Support Enforcement by FedEx Priority Overnight on July 31, 2000 (5574782636) as a result of their joint violation of Plaintiff's civil rights under the Fourteenth Amendment to the Constitution of the United States. **Plaintiff included his current address in the Demand Letters.** [Affidavit of Plaintiff, A-41].
5. **On May 8, 2001,** *without any actual or constructive notice to Plaintiff,* the State of California, Franchise Tax Board, Child Support Collections issued another ORDER TO WITHHOLD (any credits or payments owing to Brad R. Johnson) under authorization of Sections 19271 and 18670 of the California Revenue and Taxation Code to U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225 of DEBTOR, Brad R. Johnson. This ORDER TO WITHHOLD was forwarded to Plaintiff in Kankakee, Illinois by U.S. Bank and received by Plaintiff on May 21, 2001. It is important to note that the ORDER TO WITHHOLD had a Milledgeville, Georgia address, which was 7 years old. Purposefully, neither the employees of San Bernardino County (Office of the District Attorney, Child Support Enforcement) nor employees of the Franchise Tax

Board, Child Support Collections updated their records to include Plaintiff's current address. [Affidavit of Plaintiff, A-41]. Clearly, any required due process notice was not sent to Plaintiff's last known address and accordingly Defendants' have **intentionally, wantonly, and with malice of forethought** violated Plaintiff's due process guarantee under the Fourteenth Amendment to the U.S. Constitution.

6. **On June 13, 2001,** Plaintiff filed a 1983 action against certain public officials of the State of California in their individual capacities and the County of San Bernardino.

The Rulings Below

The District Court

On August 28, 2001, with a view toward transferring the instant case no matter what the cost, United States Magistrate Judge, David G. Bernthal, filed his *Report and Recommendation* (hereinafter referred to as the *Report*), A-5. The *Report* falsely stated that Defendants moved the District Court "to transfer the proceedings to the United States District Court for the Central District of California **pursuant to 28 U.S.C. Section 1404 because all Defendants reside in California and a substantial part of the events occurred there."** In fact, Defendants moved the District Court to transfer the proceedings to the United States District Court for the Central District of California **pursuant to 28 U.S.C. Section 1406(a) because it is the district in which all of the defendants reside or do business pursuant to 28 U.S.C. Section 1391(a).** The *Report* concludes by granting the *Motion for Change of Venue* under *28 U.S.C. Section 1404 [not U.S.C. Section 1406(a)]*, where the *Report* found venue controlled by *28 U.S.C. Section 1391(b) [not by 28 U.S.C. Section 1391(a)]*.

As permitted by Fed.R.Civ.P. 72(b), on September 17, 2001, Plaintiff filed *Plaintiff's Objection to the Report and*

Recommendation of the United States Magistrate Judge, David G. Bernthal and Motion to Reconsider.

On September 19, 2001, the District Court entered an unpublished *Order* [hereinafter referred to as the *District Court's September 19th Order*, A-5, wherein "[a]fter a thorough and careful de novo review," the District Court:

1. GRANTED Defendants' *Motion for Change of Venue* and ordered the instant case transferred to the Central District of California pursuant to 28 U.S.C. Section 1406(a), where the District Court identified 28 U.S.C. Section 1391(b) as controlling venue and specifically found:
   a. "Plaintiff is correct that Defendants did not ask this court to transfer venue pursuant to 28 U.S.C. Section 1404(a)."
   b. "Defendants incorrectly argued that Plaintiff based 'the venue of the present action in large part upon the court's diversity jurisdiction [28 U.S.C. Section 1391(b)].'"
2. DENIED *Plaintiff's Motion to File Amended Complaint*, where the District Court specifically found "that it is unlikely that Plaintiff left out of his Complaint any material events giving rise to the claim that would connect this claim to the Central District of Illinois."

On September 19, 2001, Plaintiff filed *Plaintiff's First Amended Complaint.*

On October 2, 2001, Plaintiff filed a motion for reconsideration of the *District Court's September 19th Order*, raising the following four objections to the District Court's application of law.

1. A CLEAR LEGAL ERROR: No Opportunity to be Heard. On the issue of the District Court's transfer for improper venue arising from the tandem application of 28 U.S.C. Section 1406(a) and 28 U.S.C. Section 1391(b).
2. A CLEAR LEGAL ERROR: No Opportunity to be Heard. On the issue of whether *Plaintiff's First Amended Complaint* provided for proper venue in the District Court.

3. MISAPPLICATION OF VENUE LAW: 28 U.S.C. Section 1391(b)(2). On the issue of the District Court's interpretation of "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred."
4. MISAPPLICATION OF VENUE LAW: 28 U.S.C. Section 1391(b)(2). On the issue of the District Court's interpretation of "a substantial part of property that is the subject of the action is situated."

On October 30, 2001, the District Court filed an unpublished *Order* [hereinafter referred to as the *District Court's October 30th Order*, A-17, wherein the District Court found that Plaintiff "had the right to amend his 'pleading once as a matter of course at any time before a responsive pleading is served'" under Fed.R.Civ.P. 15(a). Accordingly, "Plaintiff should have been allowed to file an amended complaint." **However, the District Court did not allow Plaintiff an opportunity to be heard on *Plaintiff's First Amended Complaint* with respect to the issue of improper venue and a resulting transfer pursuant to 28 U.S.C. Section 1406(a), where venue is controlled by 28 U.S.C. Section 1391(b)(2).** Instead, the District Court summarily rejected venue as being proper in the District Court by stating that the District Court has "carefully considered all of the allegations included in *Plaintiff's First Amended Complaint*," where such complaint "does not add any allegations that any of 'the events or omissions giving rise to the claim occurred' in this district. See 28 U.S.C. Section 1391(b)(2). This court specifically notes that Plaintiff does not allege that any of Defendants' actions took place in Illinois. **There are no allegations that Defendants sent anything to him in Illinois** or made any telephone calls to him in Illinois. Accordingly, this court again concludes that venue is not proper in this district." IT IS THEREFORE ORDERED THAT . . . (2) *Plaintiff's Motion for Reconsideration* (#18) is DENIED as to Plaintiff's request that this court reconsider its *Order* that granted *Defendant's Motion for Change of Venue* (#4). This case is

transferred to the Central District of California pursuant to 28 U.S.C. Section 1406(a)."

On November 26, 2001, Plaintiff-Appellant filed an appeal to the United States Court of Appeals for the Seventh Circuit from the *District Court's October 30th Order.*

Plaintiff contended that the Seventh Circuit had the following two independent and alternative bases upon which to assert jurisdiction [Plaintiff-Appellant's Petition for Rehearing] and review the *District Court's October 30th Order* granting *Defendants' Motion for Change of Venue* and a plenary transfer of the case under Section 1406(a).

1. Such order has the practical effect of denying Plaintiff's prayer for temporary and injunctive relief and therefore such order was immediately appealable under 28 U.S.C. Section 1292(a)(1) and Carson v. American Brands, Inc., 450 U.S. 79, 83-84, 101 S. Ct. 993, 67 L. Ed. 2d 59 (1981).
2. Under the collateral order doctrine of Cohen v Beneficial Industrial Loan Corp., 337 U.S. 541, 93 L. Ed. 1528, 69 S. Ct. 1221 (1949), such order is treated as final under 28 U.S.C. Section 1291 because such order (i) deals with a serious and unsettled question and (ii) has the required characteristics of being separable, final and unreviewable.

The Seventh Circuit completely ignored these bases for jurisdiction and on February 4, 2002 entered an unpublished order dismissing the appeal for lack of jurisdiction, as follows.

> "An order transferring a case to another federal district court is not immediately appealable. See *In re Joint Eastern & Southern Districts Asbestos Litigation*, 22 F. 3d 755, 762 n. 14 (7th Cir. 1994); *Graphics Communications Union v. Chicago Tribune Co.*, 779 F.2d 13, 15 (7th Cir. 1985).

However, both cited cases [*In re Joint Eastern & Southern Districts Asbestos Litigation* and *Graphics Communications Union*], dealt with a transfer order under Section 1404(a) [a transfer for convenience, essentially a change in courtroom

location]. In stark contrast, the instant case deals with a transfer order under Section 1406(a) [a transfer because of improper venue, with definite and substantive legal effects].

Plaintiff filed a *Petition for Rehearing* on February 19, 2002, which was denied in an unpublished Order of the United States Court of Appeals for the Seventh Circuit entered on April 2, 2002. Mandate issued on April 3, 2002.

Because Plaintiff wanted to file a *Petition for Writ of Mandamus*, but was prevented from doing so because the Court's mandate had issued, on April 9, 2002 Plaintiff filed a *Motion to Recall the Mandate and to Stay the Proceedings to Allow Time for Plaintiff to file his Petition for Writ of Mandamus*. On April 24, 2002 the Seventh Circuit entered an unpublished order denying Plaintiff's Motion to Recall the Mandate.

On May 1, 2002 Plaintiff filed a *Motion to Recall the Mandate and to Stay the Proceedings to Allow Time for Plaintiff to file his Petition for Writ of Certiorari*. On May 2, 2002, the Seventh Circuit entered an unpublished order denying Plaintiff's Motion to Stay the Mandate.

On July 1, 2002, Plaintiff filed a Petition for Writ of Certiorari appealing the order of Illinois District Court transferring the case to the Central District of California under Section 1406(a) because venue in Illinois was improper, on the basis that such order was final, since Plaintiff contended that the Ninth Circuit Court of Appeals would not review, de novo, the decision of the Illinois District Court as to whether venue was proper in Illinois. On February 24, 2003, this Court denied cert.

On May 22, 2002, a REPORT AND RECOMMENDATION (hereinafter referred to as the R & R), A-20, issued by Magistrate Judge Andrew J. Wistrich was filed. Magistrate Judge Wistrich recommended dismissal pursuant to FRCP 12(b)(6), in the absence of a motion under FRCP 12(b)(6), where Plaintiff had no notice or opportunity to be heard prior to Magistrate Judge Wistrich's R & R. In the absence of a motion under FRCP

12(b)(6), where Plaintiff did not receive the R & R until after the time to respond, Plaintiff had no opportunity to properly respond to the issues that the Magistrate Judge raised in the R & R.

On August 2, 2002, an ORDER (A-36) by Judge Gary L. Taylor adopting the R&R and dismissing the case with prejudice was filed.

Plaintiff appealed to the Ninth Circuit Court of Appeals. On April 21, 2001, the Ninth Circuit filed a Memorandum affirming the ORDER and JUDGMENT of the California District Court.

REASONS FOR GRANTING THE WRIT

Dr. Brad R. Johnson, the Plaintiff-Appellant-Petitioner, prays that a Writ of Certiorari issue to review the Order of the United States Court of Appeals for the Ninth Circuit filed in this case on April 21, 2003, affirming the holdings of the U.S. District Court for the Central District of California. This order should be reviewed by this honorable Court because of the compelling reasons that follow from the Questions Presented, as described below.

To Settle Important Questions of Practice under the Federal Rules of Civil Procedure
and
Rendered Decision of the United States District Court for the Central District of California that has So Far Departed from the Accepted and Usual Course of Judicial Proceedings as to Call for an Exercise of the Supreme Court's Power of Supervision

Denied Opportunity to File Amended Complaint as well as Notice and an Opportunity to be Heard in a Sua Sponte Determination under Rule 12(b)(6)

1. Whether Magistrate Judge Andrew J. Wistrich in the Central District of California erred in denying consideration of Plaintiff's Affidavit [a prior submission duly filed, incorporated by reference into *Plaintiff's First Amended Complaint* [FAC] and reflecting the factual basis of Plaintiff's claims] because it was not directly attached, **while contemporaneously denying Plaintiff's motion to amend the Complaint as well as notice and an opportunity to be heard before submitting his recommendation?**

Discussion (Issue 1)

In the first instance, when deciding a motion to dismiss, a court may consider the complaint and "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Branch v. Tunnell,* 14 F.3d 449, 454 (9th Cir.), *cert. denied,* 129 L. Ed. 2d 832, 114 S. Ct. 2704 (1994). Accordingly, Judge Gary L. Taylor erred when he did not consider Plaintiff's Affidavit incorporated by reference into Plaintiff's FAC, even though not directly attached. As is shown below, Plaintiff's Affidavit presents facts that provide the basis upon which Plaintiff's claims can be granted.

But further, "in a line of cases stretching back nearly 50 years, we have held that in dismissing for failure to state a claim under Rule 12(b)(6), "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Doe v. United States,* 58 F.3d 494, 497 (9th Cir. 1995); *see also Cook, Perkiss & Liehe, Inc. v. Northern Cal. Collection Serv., Inc.,* 911 F.2d 242 (9th Cir. 1990); *Balistreri v. Pacifica Police Dep't,* 901 F.2d 696 (9th Cir. 1990); *Noll v. Carlson,* 809 F.2d 1446 (9th Cir. 1987); *Bonanno v. Thomas,* 309 F.2d

320 (9th Cir. 1962); *Sidebotham v. Robison*, 216 F.2d 816 (9th Cir. 1954).

This amendment policy is informed by Federal Rule of Civil Procedure 15(a), which provides that leave to amend should be freely granted "when justice so requires." Although Rule 15(a) gives the trial court discretion over this matter, courts have repeatedly stressed that the court must remain guided by "the underlying purpose of Rule 15 . . . to facilitate decision on the merits, rather than on the pleadings or technicalities." *Noll*, 809 F.2d at 1448. In addition, the Supreme Court has stated that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962). To that end, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Doe*, 58 F.3d at 497.

Accordingly, the district court's action was also inconsistent with Ninth Circuit precedent because Plaintiff is a pro se plaintiff. The Ninth Circuit has noted frequently that the "rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant. Presumably unskilled in the law, the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel." *Noll*, 809 F.2d at 1448. Under *Noll*, the requirement that courts provide a pro se litigant with notice of the deficiencies in his or her complaint helps ensure that the pro se litigant can use the opportunity to amend effectively. Without the benefit of a statement of deficiencies, the pro se litigant will likely repeat previous errors. This is equally true for the pro se litigant who amends his complaint at his own instance without any guidance from the court. Amendments that are made without an understanding of underlying deficiencies are rarely sufficient to cure inadequate pleadings. Accordingly, on this basis alone, the district court erred in dismissing the instant case for failure to state a claim.

Under the Fifth Amendment to the U.S. Constitution, Plaintiff is guaranteed notice and an opportunity to be heard as well as access to the courts. Magistrate Judge Wistrich's conduct in issuing his R & R has violated Plaintiff's guarantee of Due Process under the Fifth Amendment to the U.S. Constitution (1) by reporting and recommending dismissal for failure to state a claim pursuant to FRCP 12(b)(6) without notice and opportunity to be heard, where no motion to dismiss was, in fact, pending, thereby denying Plaintiff access to the district court.

Accordingly, this honorable Court should grant Petitioner's Writ of Certiorari in furtherance of justice to correct excesses because it was clear legal error under Fed.R.Civ.P. 15(a) and the Due Process Clause of the Fifth Amendment of the U.S. Constitution for the United States District Court for the Central District of California to deny Plaintiff an opportunity to be heard on Plaintiff's First Amended Complaint with respect to sua sponte motion to dismiss under Rule 12(b)(6).

Moreover, it is important to note that in the instant case, the Ninth Circuit went against its own precedent. This case would represent an inconsistency under Ninth Circuit precedent were it not for the fact the Ninth Circuit designated its decision here as "Not for Publication." Plaintiff contends that the Ninth Circuit avoids making bad "law" from bad decisions in this manner. It is only this Court that can control such acts of manipulation. Plaintiff requests that this Court take these steps to stop this kind of abuse that may corrupt our legal system.

Rendered Decision of the United States Court of Appeals for the Ninth Circuit has Decided an Important Question of Federal Law in a way that Conflicts with Relevant Decisions of the Supreme Court

In the Central District of Illinois
Transfer under Section 1406(a) from CD IL to CD CA

2. WHETHER the Ninth Circuit Court of Appeals erred in employing an "abuse of discretion" standard (rather than a De Novo standard) in reviewing the transfer of the instant case pursuant to 28 U.S.C. Section 1406(a) from the Central District of Illinois to the Central District of California?

3. WHETHER it was clear legal error under **28 U.S.C. Section 1391(b)(2)** [within the context of a *sua sponte transfer* under **28 U.S.C. Section 1406(a)**] for the Central District of Illinois to find that venue was improper (i.e., that the District Court was not a judicial district either (i) within which a substantial part of the events or omissions giving rise to the claim occurred or (ii) within which a substantial part of property, the subject of the action, is situated)?

Discussion (Issues 2-3)

In the instant case, the United States District Court for the Central District of Illinois found venue improper. However, this District Court applied an incorrect and obsolete standard in determining that venue was improper under 28 U.S.C. Section 1391(b)(2). Under the 1990 Amendment to 28 U.S.C. Section 1391(b)(2), district courts

should no longer ask which district among the two or more potential forums is the best venue. Rather, they should ask whether the district that the plaintiff chose had a substantial connection to the claim, whether or not other forums had greater contacts. *Bates v. C & S Adjusters, Inc.*, 980 F. 2d 865, 866-68 (2d Cir. 1992) (noting that "the new statute does not, as a general matter, require the District Court to determine the best venue").

The statutory standard of the current venue statute focuses *not* on whether a defendant has made a deliberate contact--a factor relevant in the analysis of personal jurisdiction--but on the location where events occurred. Under the new version of 28 U.S.C. Section 1391(b)(2), a court must determine only whether a substantial part of the events giving rise to the claim occurred in Plaintiff's chosen forum. In cases where a plaintiff is alleging violations under the FDCPA, courts have found venue to lie based on a single act directed by the defendant/creditor to plaintiff's state of residence. See *Bates v. C&S Adjusters, Inc.*, 980 F. 2d 865, 868 (2nd. Cir. 1992) (a collection letter forwarded to Plaintiff's new state of residence sufficient for venue in that state). Accordingly, *Bates* is direct authority for the proposition that venue is proper in the instant case.

In *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co.*, 241 F. 3d 135, 153 (2d Cir. 2001) (quoting this conclusion from *Bates*), many of Zhen Hua's communications reached Titan's offices in New York through the Connecticut brokers. However, this did not alter the fact that Zhen Hua directed communications to New York. Accordingly, venue in the Southern District of New York was proper. Also see *Bailey v. Clegg, Brush and Assoc., Inc.*, 1991 U.S. Dist. LEXIS 21591, No 1:90- CV-2702-CAM, 1991 WL 143461, at *2 (N.D.Ga. June 14, 1991); *Murphy v. Allen County Claims & Adjustments*, 550 F. Supp. 128, 130-31 (S.D. Ohio 1982). See also *Vlasak v. Rapid Collection Systems, Inc.*, 962 F. Supp. 1096, 1102 (7th Cir. 1997) ("When an individual receives calls or letters from a distant collection agency -- and when those calls or letters

are allegedly illegal under the FDCPA -- it makes sense to permit the individual to file suit where he receives the communications."). Thus, it is nonsensical to permit defendant-debt collectors to engage in practices that may violate the FDCPA and harass persons in other districts, and then force such persons to come to the defendants' district to bring action against them, where the activities that transpired in the district were not insubstantial in relation to the totality of events giving rise to the plaintiff's grievance. Again, here, these cases provide direct authority for the proposition that venue is proper in the instant case.

In *U.S. v Hartbrodt*, 773 F. Supp. 1240 (SD Iowa 1991), the government alleged that Hartbrodt had been engaging in a scheme to defraud. When Hartbrodt moved to transfer venue, asserting that venue was improper in the district under 28 U.S.C. Section 1391(b), Hartbrodt argued that the events occurring in Iowa were not "substantial." In deciding whether or not events were substantial, the court first determined what events gave rise to the government's claim, alleging violations of the mail fraud statute, 18 U.S.C. Section 1341, and the wire fraud statute, 18 U.S.C. Section 1343. Therefore, in *Hartbrodt*, even one act involving the use of the mails or the telephone supported the government's claim for an injunction, assuming it was part of a scheme or artifice to defraud.

In *Stroman Reality, Inc. v. Antt Jr., et al.*, 20 F. Supp. 2d 1050 (DC Tex 1998), defendants used Texas law and the Texas government in their deliberate efforts to regulate Stroman. Defendants argued that a substantial part of events giving rise to the claim--the enforcement of their regulations--occurred in their states. The court disagreed. It stated that Stroman complained of what the defendants had done in Texas: trying to regulate his business in Texas with non-Californians and non-Floridians that happen to involve property in the defendants' states. Because the contested regulation included invoking Texas government to regulate Stroman, the court determined that venue was wholly proper in Texas.

Again, here, these cases provide direct authority for the proposition that venue is proper in the instant case. In the present action, since deprivation, damage, and harm are necessary elements of the legal theories invoked, claims of violations of constitutional guarantees under the Fifth and Fourteenth Amendments of the U.S. Constitution arise where the locus criminis or the locus in quo of such deprivation, damage, and/or harm occurs. In the present action, that place is Kankakee County, State of Illinois, the situs of the bank account from which Plaintiff's monies were taken.

"[T]he **situs** of personal property follows the domicile of the owner.This was the common law rule, and its principles have been recognized by many decisions of this court. (*In re Appeal of Borden,* 208 Ill. 369; *Ellis* v. *People,* 199 id. 548; *Mills* v. *Thornton,* 26 id. 300; *Illinois Central Railroad Co.* v. *Carr,* 302 id. 172; *People* v. *Culver,* 304 id. 566.) Thus, it was said in *Illinois Central Railroad Co.* v. *Carr, supra:* 'As a general rule, incorporeal personal property has no locality but accompanies the person of the owner wherever he goes. But that is merely a rule of the common law adopted for convenience, only, and it may be changed by the legislature in the exercise of its judgment. The actual ***situs*** of personal property having a visible and tangible existence will determine the town or district in which it may be taxed without reference to the domicile of the owner, but **intangible property** for the purpose of taxation, in the absence of a statute, is generally held to be situated at such domicile.' This rule has won unqualified acceptance when applied to the taxation of intangibles. *Blodgett* v. *Silberman,* 277 U.S. 1, 9, 10; *Baldwin* v. *Missouri,* 281 id. 586." Wheelock v. Gill, 366 Ill. 378 (1937).

Thus, venue is proper in the District Court for the Central District of Illinois under 28 U.S.C. Section 1391(b)(2).

In addition, Plaintiff-Respondent possesses the draft of $60 made payable to Viki Hollander representing the monies that were taken from Plaintiff-Petitioner by Defendants-Respondents. Accordingly, venue is proper

under 28 U.S.C. Section 1391(b)(2), since a substantial part of the property that is the subject of the action (i.e., the $60 draft) is situated within the jurisdictional area of the District Court for the Central District of Illinois.

Rendered Decision of the United States Court of Appeals for the Ninth Circuit that Overlooks a Clear Distinction which Supreme Court Cases have Drawn and in doing so Creates a Conflict among the Circuits on an Issue
and
Rendered Decision of the United States Court of Appeals for the Ninth Circuit that is in Conflict with the Decision of Another Court of Appeals on the Same Important Matter

Pre-Judgment Child Support Procedures

4. Whether Judge Gary L. Taylor in the Central District of California and the Ninth Circuit Court of Appeals erred in dismissing Plaintiff's constitutional due process claims under Section 1983 for lack of jurisdiction because it cannot be determined at the pleading stage that, as a matter of law under the Rooker-Feldman Doctrine, the district court had no jurisdiction, where, under the facts of the instant case, the judgment was a default judgment for which plaintiff had no notice or opportunity to be heard?

Discussion (Issue 4)

The *Rooker-Feldman Doctrine*

In Brokaw v. Mercer County, 235 F.3d 1000, 1019 (7th Cir. 2000), "[t]he *Rooker-Feldman* doctrine derives its name from two decisions of the Supreme Court, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 **(1983)**." *Remer*

v. Burlington Area Sch. Dist., 205 F.3d 990, 996 (**7th Cir.** 2000). Simply put, the *Rooker-Feldman* doctrine "precludes lower federal court jurisdiction over claims seeking review of state court judgments ...[because] no matter how erroneous or unconstitutional the state court judgment may be, the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment." Id.

Generally speaking, if the complaint attacks the state court judgment, then *Rooker-Feldman* bars subject matter jurisdiction. *Nesses v. Shepard*, 68 F.3d 1003, 1004 (**7th Cir.** 1995). Also, while "in its most straight-forward presentment, the *Rooker-Feldman* doctrine bars federal jurisdiction when the federal plaintiff alleges that her injury was caused by a state court judgment," the exact parameters are less than clear because the doctrine "is not limited to just those claims alleging that the state court judgment itself caused the federal plaintiff's injury; the doctrine also precludes federal jurisdiction over claims inextricably intertwined with a state court determination." *Remer*, 205 F.3d at 996. Discerning "which claims are and which claims are not 'inextricably intertwined' with a state judgment" is a difficult process. *Id.* As courts have often explained, "the pivotal inquiry in applying the doctrine is whether the federal plaintiff seeks to set aside a state court judgment or whether he is, in fact, presenting an independent claim." *Id.*

Whether Plaintiff in the instant case is presenting an independent claim rather than a claim premised on an injury caused by the state court's judgment for delinquent child support is a complex question, as it is often "'difficult to distinguish' between situations in which the plaintiff is seeking to set aside a state court judgment and ones in which the claim is independent." *Edwards v. Illinois Bd. of Adm. to the Bar*, 261 F.3d 723, 728-29 (**7th Cir.** 2001) (quoting *Long*, 182 F.3d at 555). Here, Plaintiff contends that the defendants conspired--prior to any judicial involvement—(1) to register Plaintiff's 1986 Multnomah

County child support order without the permission of the obligor, Viki Hollander and (2) to cause Plaintiff's address not to be changed to his current address, resulting in Plaintiff not receiving due process notice of such judicial proceeding. Accordingly, Plaintiff is seeking damages for the conspiracy, not for the state court's decision in the child support proceeding. Under these circumstances, Plaintiff maintains that he has an independent claim which is not barred by *Rooker-Feldman*.

In support of his position, Plaintiff also cites *Nesses*, 68 F.3d 1003. In that case, Nesses brought suit in federal court against the lawyers and some of the judges involved in a breach of contract case which he had filed in Indiana state court and lost. *Id.* at 1004. Nesses claimed that his opponents' lawyers used their political clout to turn the state judges against him. *Id.* The district court dismissed Nesses' suit for lack of jurisdiction based on the *Rooker-Feldman* doctrine. *Id.* The Seventh Circuit rejected that conclusion, reasoning that the *Rooker-Feldman* doctrine did not bar Nesses' claim because his suit was not premised on a claim that the state court judgment denied him some constitutional right; rather, his federal claim was based on a right independent of the state court proceeding. As the court explained in *Nesses*, any other conclusion would mean that "there would be no federal remedy for a violation of federal rights whenever the violator so far succeeded in corrupting the state judicial process as to obtain a favorable judgment, ..." *Id.* at 1005. Moreover, the court reasoned that such a "result would be inconsistent with cases in which, for example, police officers are sued under 42 U.S.C. § 1983 for having fabricated evidence that resulted in the plaintiff's being convicted in a state court." *Id.*

The *Nesses* reasoning applies here. As in *Nesses*, Plaintiff is not merely claiming that the decision of the state court was incorrect or that the decision violated his constitutional rights; rather, he is alleging that the people involved in the decision to register his child support order

violated his constitutional rights, independent of the state court decision.

Post-Judgment, Pre-deprivation, Child Support Enforcement Procedures

5. Whether Judge Gary L. Taylor and the Ninth Circuit Court of Appeals erred in dismissing Plaintiff's constitutional procedural due process claims under Section 1983, where, under the facts of the instant case, a child support obligation was established by default judgment without notice or opportunity to be heard, because it cannot be determined at the pleading stage, as a matter of law, that the post-judgment, pre-deprivation procedures actually employed to enforce such child support obligation did, in fact, satisfy U.S. constitutional procedural due process requirements?

6. Whether adherence to the requirement of Cal Rev & Tax Code § 19271(a)(3) ["At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement."] is a procedural due process requirement in the instant case?

7. Does *Griffins* limit *Endicott*'s holding that notice and hearing on the underlying judgment serves as constructive notice of all that will follow?

Discussion (Issues 5-7)

Two Supreme Court decisions considering what pre-enforcement process is due when a creditor seeks to enforce a judgment. *In Endicott-Johnson Corp. v. Encyclopedia Press, Inc.*, 266 U.S. 285, 69 L. Ed. 288, 45 S. Ct. 61 (1924), the Court held that, having received full notice and hearing on the underlying judgment, the debtor was not entitled to further notice before execution of that judgment:

The established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court, should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of the judgment. Thus, in the absence of a statutory requirement, it is not essential that he be given notice before the issuance of an execution against his tangible property; after the rendition of the judgment he must take "notice of what will follow," no further notice being "necessary to advance justice." *Id.* 266 U.S. 285, 288 (citations omitted).

However, a later case, *Griffin v. Griffin*, 327 U.S. 220, 232, 90 L. Ed. 635, 66 S. Ct. 556 (1946), appears to narrow the holding in *Endicott*. In *Griffin*, a wife litigated and won an award of alimony, and ten years later, without notice to the husband, she obtained a judgment that alimony payments were in arrears and a writ authorizing execution of that judgment. The Court held that the failure to give notice of the later proceedings violated due process, and therefore, that the judgment could not be enforced:

While it is undoubtedly true that the 1926 decree, taken with the New York practice on the subject, gave petitioner notice at the time of its entry that further proceedings might be taken to docket in judgment form the obligation to pay installments accruing under the decree, we find in this no ground for saying that due process does not

require further notice of the time and place of such further proceedings, inasmuch as they undertook substantially to affect his rights in ways in which the 1926 decree did not.

The Court in *Griffin* did not make reference to Endicott, but many courts have interpreted *Griffin* as limiting Endicott's holding that notice and hearing on the underlying judgment serves as constructive notice of all that will follow. *See, e.g., McCahey v. L.P. Investors*, 774 F.2d 543, 548 (2d Cir. 1985); *Brown v. Liberty Loan Corp. of Duval*, 539 F.2d 1355, 1364-65 (5th Cir. 1976); *see also Hanner v. DeMarcus*, 390 U.S. 736, 741-42, 88 S. Ct. 1437, 20 L. Ed. 2d 270 (1968) (Douglas, J., dissenting from the dismissal of writ of certiorari on the question of overruling *Endicott*). These cases interpret *Griffin* as holding that, at least as to issues and rights that were not litigated in the underlying judgment, such as defenses to execution on particular assets, *Endicott* does not supply the answer. *McCahey*, 774 F.2d at 547-49; *Brown*, 539 F.2d at 1364-65; *see also Aacen v. San Juan County Sheriff's Dep't*, 944 F.2d 691, 695 (10th Cir. 1991); *Dionne v. Bouley*, 757 F.2d 1344, 1351-52 (1st Cir. 1985).

Griffin distinguished between judgments entered with adequate prior notice and hearing (as was the case in *Endicott*) and those entered without those prejudgment procedures (which could not be enforced). *Griffin*, 327 U.S. at 233-34. Viewed in light of *Griffin*, *Endicott* does not entirely foreclose consideration of whether the Due Process Clause requires post-judgment notice or other procedures. According to Plaintiff, because she received no notice of the County's registration of Plaintiff's child support order, he failed to appear, yet he retained his right to collaterally attack jurisdiction elsewhere. As to jurisdiction (without which the judgment is void), Plaintiff never had the "day in court," where the "day in court" was the basis of *Endicott's* holding that no further pre-deprivation notice was required.

In determining, then, what post-judgment process (if any) is due, we must balance the nature of the private

interests at stake, the risk of harm from erroneous deprivations, and the government's interests affected. *See Mathews v. Eldridge*, 424 U.S. 319, 335, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976); Aacen, 944 F.2d at 695-96; *McCahey*, 774 F.2d at 548-49; *Finberg v. Sullivan*, 634 F.2d 50, 57-58 (3d Cir. 1980) (en banc); *see also Weller*, 901 F.2d at 394.

Interests that are procedurally protected by the Due Process Clause may arise from two sources -- the Due Process Clause itself and laws of the states. See Meachum v. Fano, 427 U.S. 215, 223-27, 49 L. Ed. 2d 451, 96 S. Ct. 2532 (1976). Once a protected interest is established, either through the Due Process Clause itself or through a state statute or regulation, the court must determine what process is due before the interest may be taken away. See Mathews v. Eldridge, 424 U.S. 319, 334-35, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976); Neal v. Shimoda, 131 F.3d 818, 830 (9th Cir. 1997). An essential principle of due process is that a deprivation of life, liberty or property "'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542, 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985). To determine what process is due, the court must balance the risk of an erroneous deprivation, the government's interest in providing specific procedures, and the strength of the individual's interest. See Erickson v. U.S., 67 F.3d 858, 863 (9th Cir. 1995); see also Mathews, 424 U.S. at 334-35 (employing balancing test to determine process due). This determination is a matter of federal law; it is not restricted by any specific procedures mandated by state statute or regulation. See Mathews, 424 U.S. at 334-35; Quick v. Jones, 754 F.2d 1521, 1523 (9th Cir. 1985).

Under the facts of the instant case, **Post-Judgment, Pre-deprivation Procedures** are found in of Cal Rev & Tax Code § 19271(a)(3), satisfying U.S. constitutional requirements, if followed. However, here, these procedural requirements were not followed. In fact, Plaintiff contends that Defendants conspired to violate such due process

procedures, where adherence to said requirements is a procedural due process requirement in the instant case.

Absolute Prosecutorial Immunity

8. Whether Judge Gary L. Taylor erred in holding that Stout is entitled to Absolute Prosecutorial Immunity because it cannot be determined at the pleading stage, as a matter of law, that Stout enjoys Absolute Prosecutorial Immunity from plaintiff's Section 1983 claims for money damages since, under the facts of the instant case, intentionally failing to (i) diligently determine Plaintiff's last known address and (2) attest to proper notice are non-advocatory, administrative functions?

Discussion (Issue 8)

In **Kalina v. Fletcher,**118 S. Ct. 502 (1997), the Supreme Court addressed whether the doctrine of absolute **prosecutorial immunity** protects a prosecutor from liability for attesting to false facts in an affidavit supporting the issuance of an arrest warrant. Id. at 505. A unanimous Court held that a prosecutor is not protected by absolute immunity for her action in executing the affidavit. Id. at 510. While absolute immunity protects a prosecutor for activities in initiating and prosecuting a case or by otherwise performing acts "intimately associated with the judicial phase of the criminal process," [Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976)] the Court concluded in Kalina that "testifying about facts is the function of the witness, not of the lawyer." Kalina, 118 S. Ct. at 510. The Court found that the prosecutor in Kalina functioned as a complaining witness. Id. Since a complaining witness was accorded only qualified immunity at common law [Id. at 508] and no policy concerns justified extending absolute immunity to a prosecutor for such an action [Id. at 510],

the Court declined to accord absolute immunity to the prosecutor in Kalina for attesting to facts. Id.

In Buckley v. Fitzsimmons, 509 U.S. 259 (1993), the Supreme Court further clarified the scope of absolute **prosecutorial immunity** by holding that absolute immunity should not be accorded to a prosecutor for false statements made to the media and for allegedly fabricating evidence during the preliminary investigation of a crime. Id. at 261. A unanimous Supreme Court held that the prosecutor's statements to the press were non-advocatory and, thus, not entitled to absolute immunity. Id. at 277. A five-to-four majority also held that the alleged fabrication of evidence was not advocatory and, thus, not deserving of absolute immunity. Id. at 272, 282. The Court stated that the ultimate question was whether the function in question was advocatory or non-advocatory. Id. at 272-73. A prosecutor cannot engage in advocatory acts, however, until probable cause is determined. id. at 274. The Court recognized that there is a difference between the advocate's role in evaluating evidence and interviewing witnesses as he prepares for trial, on the one hand, and the detective's role in searching for the clues and corroboration that might give him probable cause to recommend that a suspect be arrested, on the other hand. When a prosecutor performs the investigative functions normally performed by a detective or police officer, it is "neither appropriate nor justifiable that, for the same act, immunity should protect the one and not the other." Id. at 273 (quoting Hampton v. Chicago, 484 F.2d 602, 608 (7th Cir. 1973)).

In *Zahrey*, the Second Circuit took the position that a plaintiff does state a claim under § 1983 when he shows that prosecutorial misconduct in gathering evidence has led to a deprivation of his liberty. The intervention of a subsequent immunized act by the same officer does not break the chain of causation necessary for liability. *Zahrey* v. *Coffey*, 221 F.3d 342 (CA2 2000); see also *Clanton* v. *Cooper*, 129 F.3d 1147 (CA10 1997).

Under the facts of the instant case,

Accordingly, for the above reasons, this Court should VACATE the ORDER and JUDGMENT of Judge Gary L. Taylor and REMAND this case for further proceedings on this issue.

CONCLUSION/SUMMARY

Petitioner contends:

- Proper development of the law requires that the Supreme Court answer the Questions Presented.
- The Questions Presented:
    - address problems beyond the academic or the episodic and
    - Involve Principles, the settlement of which is important to the public as distinguished from the parties.
- There are subtle and important questions of practice dealing with the Federal Rules of Civil Procedure that is best for the Supreme Court to address. In the past, this Court has not hesitated to reverse a District Court where it concludes that an action of the District Court did not comply with a provision of the Federal Rules of Civil Procedure.
- In this case, an opportunity is afforded to resolve a conflict between the Circuits within 3 important areas: (1) on the reviewability of transfer orders, (2) on the procedural due process requirements within the context of post-judgment, pre-deprivations of property, and (3) on the applicability of Rooker-Feldman within the context of a default judgment in the absence of notice and opportunity to be heard. Within these contexts, efforts by various lower courts to effect a resolution have given rise to a variety of inconsistent opinions resulting from those courts' attempts to apply decisional authority of this Court, whose holdings themselves do not readily mesh to guide such resolution. Lower courts have seized upon this Court's rhetoric,

rather than its logic. For example, lower courts have raised generic terms like "transfer" to the status of a rule of law and have applied this rule to all types of transfers, totally disregarding legal effect. An approach to the resolution of claims of competing interests, which focuses on generic concepts, invites judicial discord, since the decisional variable lacks even intuitive appropriateness to the problems that they are supposed to resolve. A compelling need therefore exists both to reconstruct a principle or a series of principles to govern the reviewability of transfers and to discontinue reliance on generic terms like "transfer" that is inappropriate to a resolution of the situations to which courts have with increasing difficulty applied.

Accordingly, given:

- **that the Questions Presented are substantial and novel and had occasioned a split of authority among the lower federal courts,**
- **the need for uniform enforcement of the federal common law and the Federal Rules of Civil Procedure**

the petitioner respectfully prays that its petition for a Writ of Certiorari be granted.

Respectfully submitted,

Brad R. Johnson

Dr. Brad R. Johnson
Plaintiff Pro Se
935 S. Wildwood Ave
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(815) 928-8455

Dated: December 12, 2003

(2) Supreme Court, U.S.
FILED

03 876 SEP 29 2003

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRAD R. JOHNSON,

Plaintiff

v.

FRANCHISE TAX BOARD, STATE OF CALIFORNIA,

BILL LOCKYER,

DENNIS L. STOUT,

COUNTY OF SAN BERNARDINO,
STATE OF CALIFORNIA,

Respondents

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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Appendix

APPENDIX [A]
TABLE OF CONTENTS

Appendix Table of Contents A-1

Opinions, Orders, Findings of Fact, Conclusions of Law

(i) by the United States District Court for the Central District of Illinois, Urbana Division

Magistrate Judge's Report and Recommendation Filed on August 28, 2001 ..... A-5

Order of Judge McCuskey approving Magistrate Judge's Report and Recommendation Filed on September 19, 2001 ..... A-11

Order of Judge McCuskey Granting Plaintiff's Motion for Reconsideration Filed on October 30, 2001 ..... A-17

(ii) by the United States District Court for the Central District of California, Eastern Division

Magistrate Judge's Report and Recommendation Filed on May 22 2002 ..... A-20

Order of Judge Taylor approving Magistrate Judge's Report and Recommendation Filed on August 2, 2002 ..... A-36

(iii) by the United States Court of Appeals for the Ninth Circuit

Memorandum Affirming the holdings of the United States District Court for the Central District of California Filed April 21, 2003 ..... A-37

APPENDIX [A]
TABLE OF CONTENTS CONTINUED

Order Denying Rehearing Filed July 1, 2003 ..... A-40

Other Submissions

Affidavit of Plaintiff Filed July 30, 2001 ..... A-41

Affidavit of Viki Hollander Filed July 30, 2001 ..... A-57

CONSTITUTIONAL PROVISIONS

U.S. Const. Art. III Section 2, cl. 1 ..... A-61

U.S. Const. Amend. V A-61

U.S. Const. Amend. XIV A-61

STATUTES

18 U.S.C. Section 1341 ..... A-63

18 U.S.C. Section 1343 ..... A-63

28 U.S.C. Section 1254(1) A-64

28 U.S.C. Section 1291 ..... A-64

28 U.S.C. Section 1294(1) A-64

28 U.S.C. Section 1343 ..... A-64

28 U.S.C. Section 1391 ..... A-65

28 U.S.C. Section 1404 ..... A-65

28 U.S.C. Section 1406(a) A-65

Pages

42 U.S.C. Section 1983 ..... A-66

RULES

Fed.R.Civ.P. 15(a) A-66

Fed.R.Civ.P. 72(b) A-66

US CODE - CHILD SUPPORT ENFORCEMENT
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 7. SOCIAL SECURITY ACT
TITLE IV. GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN
AND FOR CHILD-WELFARE SERVICES
PART D. **CHILD SUPPORT** AND ESTABLISHMENT OF PATERNITY

42 USCS § 651 (2003) A-67

42 USCS § 652 (2003) A-68

42 USCS § 654 (2003) A-69

42 USCS § 654b (2003) A-71

42 USCS § 657 (2003) A-72

42 USCS § 666 (2003) A-72

THE CALIFORNIA PLAN - CHILD SUPPORT ENFORCEMENT

Child Support Enforcement Fairness Act of 2000 (Stats 1999 ch 653) A-76

TABLE OF AUTHORITIES CITED CONTINUED

Pages

Cal Fam Code § 5601 **(2003)** A-77

Cal Fam Code § 17400 **(2003)** A-78

Cal Fam Code § 17404 **(2003)** A-79

Cal Fam Code § 17400 **(2003)** A-79

Cal Rev & Tax Code § 19271 (2001) A-80

Cal Fam Code § 17406 **(2003)** A-86

Cal Fam Code **§** 17430 **(2003)** A-86

Cal Fam Code § 215 **(2003)** A-87

Cal Fam Code § 17401 **(2003)** A-87

Cal Fam Code § 4701 **(2003)** A-88

Cal Fam Code § 17520 **(2003)** A-88

Cal Fam Code § 17522 **(2003)** A-90

Cal Fam Code § 17524 **(2003)** A-91

Cal Fam Code § 17526 **(2003)** A-91

Cal Fam Code § 17800 **(2003)** A-92

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

BRAD R. JOHNSON, Plaintiffs,	)	
v.	)	**FILED**
FRANCHISE TAX BOARD, STATE OF CALIFORNIA; OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; BILL LOCKYER, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; DENNIS L. STOUT, OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; and COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA,	)	AUG 28 2001 John M. Waters, Clerk U.S. DISTRICT COURT CENTRAL DISTRICT OF ILLINOIS
Defendants	)	**Case No. 01-2145**

REPORT AND RECOMMENDATION

In June 2001, Plaintiff, Brad R. Johnson, filed a Complaint and Demand for Jury Trial (#1) against Defendants Franchise Tax Board of the State of California;

Office of the Attorney General, California Department of Justice; Bill Lockyer, California Attorney General; Dennis L. Stout, Office of the District Attorney for San Bernardino County, California; Office of the District Attorney for San Bernardino County, California; and County of San Bernardino, California.

In July 2001, Defendant County of San Bernardino (including the Office of the District Attorney and Dennis Stout) filed a Motion To Dismiss Complaint for Improper Venue, or in the Alternative, Motion for Change of Venue (#4). Plaintiff then filed a Motion To File Amended Complaint (#7). After reviewing the parties' pleadings and memoranda, this Court recommends, pursuant to its authority under 28 U.S.C. § 636(b)(1)(B), that Defendant's Motion To Dismiss (#4-1) be **DENIED** and Defendant's Motion for Change of Venue (#4-2) be **GRANTED**. The Court also recommends that Plaintiffs Motion To Amend (#7) be **DENIED**.

I. Background

Plaintiff's 48-page complaint alleges that Defendants violated RICO and violated his constitutional rights under the Fifth and Fourteenth Amendments, and also alleges defamation and intentional infliction of emotional distress. Jurisdiction is based on federal question.

II. Standards of Review

The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the sufficiency of the complaint, not to decide the merits of the case. *Miller v. Reebie Storage and Moving Company, Inc.*, No. 93C3986, 1993 WL 414689, at *1 (N.D. Ill. October 15, 1993). When considering a motion to dismiss, the Court must accept as true all well-pleaded factual allegations in the claims, and draw all reasonable inferences in the light most favorable to the nonmoving party. *Gutierrez v. Peters*, 111 F.3d 1364, 1368-69 (7th Cir. 1997). The Court should dismiss the claim only if the nonmoving party can prove no set of facts consistent with the allegations of the complaint that would entitle him to

relief. *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312, 1319-20 (7th Cir. 1997).

The party requesting a transfer of venue bears the burden of showing that a different venue is "clearly more convenient." *Heller Fin. Inc. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286, 1293 (7th Cir. 1989); *Pasulka v. Sykes*, 131 F. Supp. 2d 988, 994 (N.D. Ill. 2001). In addition, a plaintiff's selected venue "is given deference, unless it lacks any significant contacts with the claim." *Id.* at 995.

III. Discussion

A. Motion To Dismiss Complaint for Improper Venue, or in the Alternative, Motion for Change of Venue

Defendant argues that Central District of Illinois should dismiss the case based on improper venue under 28 U.S.C. § 1391. Alternatively, it asks the Court to transfer the proceedings to the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1404 because all Defendants reside in California and a substantial part of the events occurred there.

As a preliminary matter, the Court notes that, in arguing that venue is proper in the Central District of Illinois, Plaintiff presents a number of arguments related to jurisdiction. No one disputes that federal courts have federal question jurisdiction over the claims in this case pursuant to 28 U.S.C. § 1343. The propriety of venue in the Central District of Illinois is the issue here, not the existence of federal jurisdiction.

The applicable statute governing venue when jurisdiction is based on federal question is 28 U.S.C. 1391(b), which provides as follows:

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the

> action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(b).

Plaintiff contends that subsection (2) of the statute applies because the claim arose in the Central District of Illinois. Specifically, he contends that the claim arose in the Central District because the injury occurred there. Therefore, his choice of venue is proper. He apparently concludes that the injury "occurred" in Illinois because that is where he lives and he is the allegedly injured party. He states as follows:

> In the present action, since deprivation, damage, and harm are necessary elements of the legal theories invoked, claims of (1) violations of constitutional guarantees under the Fifth and Fourteenth Amendments of the U.S. Constitution and (2) violations of RICO arise where the locus criminis or the locus in quo of such deprivation, damage, and/or harm occurs. In the present action, that place is Kankakee County, State of Illinois.

(Plaintiff's Response in Opposition to Defendants' Motion To Dismiss Complaint for Improper Venue, or in the Alternative, Motion for Change of Venue, #9, p. 12.) He cites no authority to support his argument.

This Court has reviewed Plaintiff's long and detailed complaint and finds no allegations of any events taking place in the Central District of Illinois. The party requesting a transfer of venue bears the burden of showing that a different venue is "clearly more convenient." *Heller Fin*, 883 F.2d at 1293. Here, Defendant has met its burden. Courts may consider the convenience of parties and witnesses when addressing a request for transfer of venue. 28 U.S.C. § 1404(a). All Defendants reside in California. Moreover, based on the lengthy complaint, it appears that most of the alleged events occurred in California, although some of the banking activities occurred in Oregon. In fact, Plaintiff has not alleged any connection with the Central

District of Illinois except that he now resides there. While the Court acknowledges that a plaintiff's selected venue is given some deference; in a case such as this, where the material events giving rise to the claim have no connection with the plaintiff's preferred venue, the Court need not defer to the plaintiff. See *Pasulka*, 131 F. Supp. at 994. Nothing in the complaint indicates a connection with the Central District of Illinois and this lawsuit's connection to California is unmistakable. Accordingly, the Court recommends granting Defendant's motion to transfer venue to the United States District Court for the Central District of California. Because the Court recommends transferring this case, it will not consider Defendant's motion to dismiss on the basis of improper venue.

B. Plaintiff's Motion To Amend

After Defendant filed its motion to transfer venue, Plaintiff filed a motion to amend his complaint, requesting leave to amend the complaint "to take into account the statements made by Defendants' Motion to Dismiss Complaint for Improper Venue . . . for the purpose of making such amended complaint clearer and more concise." (Plaintiff's Motion to File Amended Complaint, #7, p. 6.) In his Memorandum of Law in Support of Plaintiff's Motion To File Amended Complaint (#8), Plaintiff summarizes the allegations of his complaint and restates his desire to amend that complaint "'to take into account the statements made by Defendants' Motion to Dismiss." (#8, p. 6)

The Federal Rules of Civil Procedure require that "leave shall be freely given when justice so requires." Fed.R.Civ .P. 15. Nevertheless, a court need not allow amendment if it would be futile. *Payne v. Churchich*, 161 F.3d 1030, 1036 (7th Cir. 1998), *cert. denied*, 527 U.S. 1004 (1999). In this case, Plaintiff has filed an extremely detailed complaint, well beyond a "short and plain statement of the claim showing that the pleader is entitled to relief." *See* Fed.R.Civ.P. 8. Considering the detail Plaintiff has lavished on his complaint, the Court concludes that it is unlikely

that he left out any material events giving rise to the claim that would connect this claim to the Central District of Illinois. Accordingly, the Court recommends denying Plaintiff's motion to amend at this time.

IV. Summary

For the reasons set forth above, this Court recommends that Defendant's Motion To Dismiss (#4-1) be **DENIED** and Defendant's Motion for Change of Venue (#4-2) be **GRANTED**. The Court also recommends that Plaintiff's Motion To Amend (#7) be **DENIED** at this time. The parties are advised that any objection to this recommendation must be filed in writing with the clerk within ten (10) working days after being served with a copy of this Report and Recommendation. *See* 28 U.S.C. § 636(b)(1). Failure to object will constitute a waiver of objections on appeal. *Video Views, Inc. v. Studio 21, Ltd*, 797 F.2d 538 (7th Cir. 1986).

Entered this 28th day of August, 2001.

/s/

DAVID G. BERNTHAL
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
DANVILLE/URBANA DIVISION

BRAD R. JOHNSON, Plaintiffs, v. FRANCHISE TAX BOARD, STATE OF CALIFORNIA; OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; BILL LOCKYER, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; DENNIS L. STOUT, OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; and COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, Defendants	**FILED** SEP 19 2001 John M. Waters, Clerk U.S. DISTRICT COURT CENTRAL DISTRICT OF ILLINOIS **Case No. 01-CV-2145**

ORDER

A Report and Recommendation (#13) was filed by the Magistrate Judge in the above cause on August 28, 2001. On September 17, 2001, Plaintiff, Brad R. Johnson, filed his Objection to the Report and Recommendation (#

14) and a Memorandum in Support (# 15). This court has carefully reviewed the Magistrate Judge's reasoning and Plaintiff's Objection and Memorandum of Law. After a thorough and careful de novo review, this court agrees with the Magistrate Judge that this case should be transferred to the Central District of California, but concludes that the transfer must be pursuant to 28 U.S.C. § 1406(a) rather than pursuant to 28 U.S.C. § 1404(a).

Defendants County of San Bernardino, the Office of the District Attorney and Dennis Stout, filed a Motion to Dismiss Complaint for Improper Venue, or in the Alternative, Motion for Change of Venue (#4). Plaintiff is correct that Defendants did not ask this court to transfer venue pursuant to 28 U.S.C. § 1404(a). Defendants moved for dismissal of Plaintiff's Complaint pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure and, in the alternative, sought an order transferring the case pursuant to 28 U.S.C. § 1406(a). While a court may consider a transfer pursuant to 28 U.S.C. § 1404(a) sua sponte (see AMCO Ins. Co. v. Tutera Group Inc., 1994 WL 714560, at *2 (N.D. Ill. 1994); Smith v. Thomas, 1990 WL 37630, at *2 (N.D. Ill. 1990)), such a transfer is only proper where venue is proper in the transferor court (AMCO Ins. Co., 1994 WL 714560, at *1).

In this case, this court concludes that venue is not proper in this court. Defendants incorrectly argued that Plaintiff based "the venue of the present action in large part upon the court's diversity jurisdiction." It is clear, however, that Plaintiff has alleged federal causes of action based upon 42 U.S.C. § 1983 and the Racketeering Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. § 1961 et seq.). Pursuant to 28 U.S.C. § 1391(b), where jurisdiction is not founded solely on diversity of citizenship, a civil action may be brought only in:

(1) a judicial district where any defendant resides, if all defendants reside in the same State,

(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim

occurred, or a substantial part of property that is the subject of the action is situated, or

(3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought. 28 U.S.C. § 1391(b).

"One of the central purposes of statutory venue is to ensure that a defendant is not 'haled into a remote district having no real relationship to the dispute.'" Selzer v. County of Allegan, 1998 WL 749436, at *5 (N.D. Ill. 1998), quoting Woodke v. Dahm, 70 F.3d 983, 985 (8th Cir. 1995).

In this case, all of the Defendants are residents of California and, therefore, none of the Defendants are residents of this district. Accordingly, Plaintiff cannot rely on 28 U.S.C. § 1391(b)(1) to establish venue here. Plaintiff argues that venue is proper under 28 U.S.C. § 1391(b)(2) because he is a resident of this district and, therefore, this is where the injury occurred. This court does not agree. Based upon the detailed allegations of Plaintiffs Complaint (#1) as well as the Affidavit of Plaintiff (#11) and the Affidavit of Viki S. Hollander (#12), it is clear that all of the actions by Defendants that Plaintiff is complaining of occurred in California. There are no facts alleged showing that any of "the events or omissions giving rise to the claim occurred" in this district. See 28 U.S.C. § 1391(b)(2).

This court has carefully reviewed all of the case law cited by Plaintiff and finds all of it inapplicable to this case. The case law simply does not support Plaintiff's notion that the fact that he resides here, and thereby allegedly suffered financial damage and damage to his reputation here, as a result of Defendants' wrongful actions in California, means that venue is proper in this district. In all of the cases cited by Plaintiff, some action, such as kidnapping or discharge from employment, occurred in the district where venue was found to be proper. This court further notes that Plaintiff's citation of cases involving infringement of a patent, trademark or copyright are clearly inapplicable. This court concludes that this case

is most similar to Selzer. In that case, the pro se plaintiff alleged that the defendants, all of whom were residents of Michigan, engaged in a conspiracy against her to deprive her of her property rights. The plaintiff based her cause of action on 42 U.S.C. § 1983, 1985 and 1986, and on RICO. The court in Selzer concluded that venue was not proper in the Northern District of Illinois, the district where the plaintiff resided. Selzer, 1998 WL 749436, at *3.

This court also rejects Plaintiffs suggestion that venue is proper in this district because Plaintiffs bank account is located here. Based upon the allegations of this case, Plaintiffs bank account was garnished by Defendants on two occasions. Plaintiffs Affidavit shows that the garnishment notices were sent to U.S. Bank in Portland, Oregon. Further, Plaintiff stated in his Affidavit that the U.S. Bank branch nearest to him was located in the North Chicago suburb of Lincoln Park. Plaintiff nevertheless contends that his bank account is located in this district "[b]ecause the situs of my U.S. Bank account is my place of domicile." Even accepting this rather bold, essentially unsupported statement, Plaintiff has not shown that venue is proper here. Plaintiff is seeking damages from Defendants, not any relief related to his bank account. Accordingly, Plaintiff's bank account is not the "subject" of this action and venue is not proper even if Plaintiff is correct that his bank account is located here. See 28 U.S.C. § 1391 (b)(2) (venue proper in judicial district where "a substantial part of property that is the subject of the action is situated").

In addition, to the extent that Plaintiff raises RICO claims against Defendants, 18 U.S.C. § 1965 is the applicable venue statute. Under 18 U.S.C. § 1965, a civil action against any person may be instituted in the district court of the United States for any district in which such person is found, has an agent, or transacts his affairs" (18 U.S.C. § 1965(a)) or "in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought

before the court" (18 U.S.C. § 1965(b)). In this case, it is clear that venue is not proper based upon § 1965(a) because no Defendant resides here or has any connection to this district. As far as § 1965(b), the Seventh Circuit has suggested that the "ends of justice" do not require proper venue in a district where another district will have jurisdiction over the defendants. See Lisak v. Mercantile Bancorp. Inc., 834 F.2d 668, 672 (7th Cir. 1987); cert. denied, 485 U.S. 1007 (1988); Selzer, 1998 WL749436, at *5. This court concludes, based upon Lisak and Selzer that the "ends of justice" do not require it to summon the California Defendants to this district. See Selzer, 1998WL 749436, at *5. This court sees no reason to hale these Defendants into this district for actions they committed in California. Accordingly, this court concludes that venue is not proper in this district for Plaintiff's RICO claims. See Selzer, 1998 WL 749436, at *5.

This court has concluded that venue is not proper in this district. However, this court declines to dismiss the action. When a case is filed in the wrong district, 28 U.S.C. § 1406(a) authorizes the district court to dismiss or "if it be in the interest of justice," to transfer the case to "any district or division in which it could have been brought." Following careful consideration, this court concludes that the "interest of justice" supports granting Defendants' alternative request that this case be transferred to the Central District of California pursuant to 28 U.S.C. § 1406(a). See Selzer, 1998 WL 749436, at *6.

Finally, this court agrees with the Magistrate Judge that Plaintiffs Motion to File Amended Complaint (#7) should be denied. This court agrees that it is unlikely that Plaintiff left out of his Complaint any material events giving rise to the claim that would connect this claim to the Central District of Illinois. This court has reached this conclusion after careful review of Plaintiff's detailed Affidavit (#11).

IT IS THEREFORE ORDERED THAT:

(1) Plaintiffs Motion to File Amended Complaint (#7) is DENIED.

(2) Defendants' Motion to Dismiss Complaint for Improper Venue, or in the alternative, Motion for Change of Venue (#4) is GRANTED. This case is transferred to the Central District of California pursuant to 28 U.S.C. § 1406(a).

Entered this 19th day of September, 2001.

/s/

MICHAEL P. McCUSKEY
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
DANVILLE/URBANA DIVISION

BRAD R. JOHNSON, Plaintiffs, v. FRANCHISE TAX BOARD, STATE OF CALIFORNIA; OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; BILL LOCKYER, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; DENNIS L. STOUT, OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; and COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, Defendants	**FILED** OCT 30 2001 John M. Waters, Clerk U.S. DISTRICT COURT CENTRAL DISTRICT OF ILLINOIS **Case No. 01-CV-2145**

ORDER

On September 19, 2001, this court entered an Order (#16) which DENIED P1aintiff's Motion to File Amended Complaint (#7) and GRANTED the Motion for Change of Venue (#4) filed by Defendants County of San Bernardino, the Office of the District Attorney and Dennis Stout. Also

On September 19, 2001, Plaintiff filed his First Amended Complaint (#17). On October 2, 2001, Plaintiff filed a Motion for Reconsideration of this Court's Order (#18) and a Memorandum in Support (#19).

In his Motion, Plaintiff argues that this court improperly denied his Motion to File Amended Complaint. The court now concludes that Plaintiff is correct that he had the right to amend his "pleading once as a matter of course at any time before a responsive pleading is served." Fed. R. Civ. P. 15(a). A responsive pleading does not include a motion to dismiss. Duda v. Board of Educ. of Franklin Park Pub. Sch. Dist. No. 84, 133 F.3d 1054, 1056-57 (7th Cir. 1998). Therefore, because no responsive pleading had been filed, Plaintiff should have been allowed to file an amended complaint. However, Plaintiff did, in fact, file his First Amended Complaint (#17).

Plaintiff also argues that this court should not have granted Defendants' Motion for Change of Venue. This court has carefully considered all of the arguments raised by Plaintiff in his Motion and has also carefully considered all of the allegations included in Plaintiff's First Amended Complaint. This court notes that, while Plaintiff's First Amended Complaint adds claims for violations of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) and for violations of the Fair Debt Collections Practices Act (15 U.S.C. § 1692-1692o), it does not add any allegations that any of "the events or omissions giving rise to the claim occurred" in this district. See 28 U.S.C. § 1391(b)(2). This court specifically notes that Plaintiff does not allege that any of Defendants' actions took place in Illinois. There are no allegations that Defendants sent anything to him in Illinois or made any telephone calls to him in Illinois. Accordingly, this court again concludes that venue is not proper in this district.

IT IS THEREFORE ORDERED THAT:

(1) Plaintiff's Motion for Reconsideration (#18) is GRANTED as to Plaintiff's request that this court reconsider its Order which denied Plaintiff's Motion to File Amended Complaint (#7). Plaintiff's Motion to File Amended Complaint (#7) is now GRANTED. This court notes that Plaintiff has already filed his First Amended Complaint (#17).

(2) Plaintiff's Motion for Reconsideration (#18) is DENIED as to P1aintiff's request that this court reconsider its Order which granted Defendants' Motion for Change of Venue (#4). This case is transferred to the Central District of California pursuant to 28 U.S.C. § 1406(a).

Entered this 29th day of October, 2001.

/s/

MICHAEL P. McCUSKEY
U.S. DISTRICT JUDGE

Filed
Clerk, U.S. District Clerk

May 22 2002

Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

BRAD R. JOHNSON,	
Plaintiff	
v.	**Case No. EDCV 02-319 GLT(AJW)**
FRANCHISE TAX BOARD, et al.	**REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**
Defendants	

Plaintiff filed this action pro se on June 13, 2001.[1] Plaintiffs First Amended Complaint (the "amended complaint" or "FAC") alleges violations of the Federal Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq., the Fair Debt Collection Practices Act ("FDCPA"), 15 U .S.C. §§ 1692-1692o, 42 U.S.C. § 1983, the Racketeer

[1] This case was transferred to this court by the United States District Court for the Central District of Illinois in an order dated September 19. 2001.

Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 et seq., and state law. For the reasons set forth below, it is recommended that this action be dismissed with prejudice.

Plaintiff's Allegations[2]

The amended complaint names the following defendants: (1) the Franchise Tax Board of the State of California (the "Board"); (2) Bill Lockyer ("Lockyer"), Attorney General of the State of California, in his individual capacity only; (3) the County of San Bernardino, California (the "County"); and (4) Denis L. Stout ("Stout"), District Attorney of the County of San Bernardino, in his individual capacity only. [FAC at 2-4]. Plaintiff alleges that the Board violated the FCRA and the FDCPA in connection with its attempts to enforce and collect a non-existent debt relating to plaintiff's child-support obligation, and that defendants deprived plaintiff of procedural due process in violation of 42 U .S.C. § 1983 by implementing unconstitutional procedures for establishing and enforcing child support obligations. [FAC at 4-8, 10-11]. In particular, plaintiff alleges that sections 19271 and 18670 of the California Revenue and Taxation Code are unconstitutional as applied to plaintiff, and on their face. [FAC at 11-12]. Plaintiff further alleges that the Board and the County, acting through their employees and agents,

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[2] The amended complaint purports to incorporate by reference the facts alleged in an affidavit that plaintiff filed in this case on July 30, 2001, as part of his opposition to a motion to dismiss. [FAC at 4]. The amended complaint, however, may not incorporate by reference facts alleged in an earlier pleading or other submission. See C.D. Cal. Local Rule 15-2 ("Complete Document. Every amended pleading filed as a matter of right or allowed by order of the Court shall be complete including exhibits. The amended pleading shall not refer to the prior, superseded pleading.") Accordingly, for purposes of this report, the court has considered only those facts alleged in the body of the amended complaint (which was filed without exhibits).

violated the RICO statute. [FAC at 17-25]. Finally, plaintiff alleges state law claims for libel and intentional infliction of emotional distress. [FAC at 25-30]. The amended complaint seeks monetary, declaratory, and injunctive relief. [FAC at 30-33].

Discussion

A complaint may be dismissed for failure to state a claim upon which relief can be granted. See Fed.R.Civ.P. 12(b)(6). Dismissal is not warranted, however, "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Gilligan v. Jamco Dev. Corp., 108 F.3d 246, .248 (9th Cir. 1997) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (195)). The court may consider only the contents of the complaint, must construe all allegations of material fact in the light most favorable to the nonmoving party, and must draw all reasonable inferences favorable to the nonmoving party. See Morales v. City of Los Angeles, 214 F.3d 1151, 1153 (9th Cir. 2000); Campanelli v. Bockrath, 100 F.3d 1476, 1479 (9th Cir.1996); Federation of African American Contractors v. City of Oakland, 96 F.3d 1204, 1207 (9th Cir. 1996). Conclusory allegations of law and unreasonable inferences, however, are insufficient to defeat a motion to dismiss. In re Syntex Corp. Sec. Litig., 95 F.3d 922,926 (9th Cir. 1996).

Dismissal under Federal Rule 12 (b)(6) may be based on either: (I) lack of a cognizable legal theory, or (2) insufficient facts under a cognizable legal theory. SmileCare Dental Group v. Delta Dental Plan of California, Inc., 88 F.3d 780, 783 (9th Cir.) (citing Robertson v. Dean Witter Reynolds. Inc., 749 F.2d 530,533-34 (9th Cir. 1984)), cert. denied, 519 U.S. 1028 (1996). A motion to dismiss also may be granted if an affirmative defense or other bar to relief, such as the statute of limitation, is apparent from the face of the complaint. See TwoRivers v. Lewis, 174 F.3d 987, 991 (9th Cir. 1999).

A pro se litigant must be given leave to amend his or her complaint to state a claim unless it is absolutely

clear the deficiencies of the complaint cannot be cured by amendment. See, e.g., Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (stating that leave to amend should be granted when a complaint is dismissed under 28 U.S.C. § 1915(e) "if it appears at all possible that the plaintiff can correct the defect"); Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam) (explaining that "unless it is absolutely clear that no amendment can cure the defect", a pro se litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend). Before dismissing a pro se civil rights complaint for failure to state a claim, the court must give the plaintiff a statement of the complaint's deficiencies. Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995); Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987). A statement of deficiencies need not provide great detail; the court need draft only a few sentences explaining the deficiencies. Noll, 809 F.2d at 1448-49.

1. Service of process

The County and Stout appeared in this action shortly after it was filed in the Central District of Illinois to move for a dismissal or transfer based on improper venue. [See Motion to Dismiss filed on July 17, 2001] Although the complaint was flied in June 2001, approximately seventeen months ago, nothing in the record indicates that the Board or Lockyer have appeared in this action, or that they have been served with the summons and complaint. See Fed.R.Civ.P. 4; C.D. Cal. Local Rule 5-3.

Plaintiff has the burden to establish that he effected timely service of process in compliance with Rule 4(m) of the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 4(c)(1) ("The plaintiff is responsible for service of a summons and complaint within the time allowed under subdivision (m) …. "). If service has not been made upon a defendant within 120 days of the date the complaint was filed, the court "shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows

good cause for the failure, the court shall extend the time for service for an appropriate period." Fed.R.Civ.P. 4(m). The court has discretion "to relieve a plaintiff of the consequences of an application of [Rule 4(m)]" even without a showing of good cause, if, among other things, the statute of limitation would bar the refiled action, the defendant is evading service, or a pro se litigant is confused about the requirements of service. See Advisory Committee Notes to the 1993 Amendments to Rule 4(m) foll. Fed.RCiv.P. 4; see also Troxell v. Fedders of North America. Inc., 160 F.3d 381,382-283 (7th Cir. 1998) (explaining that district courts may "take factors like a statute of limitations bar, prejudice to the defendant, actual notice of a lawsuit, and eventual service into account" in deciding whether to relieve a party from an unexcused failure to comply with Rule 4)); Thompson v. Brown, 91 F.3d 20, 21 (5th Cir. 1996) ("We agree with the majority of circuits that have found that the plain language of rule 4(m) broadens a district court's discretion by allowing it to extend the time for service even when a plaintiff fails to show good cause.") (citing Espinoza v. United States, 52 F.3d 838,840 (10th Cir. 1995) and Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1304 (3d Cir. 1995)); Matasareanu v. Williams, 183 F.R.D. 242, 245-146 (C.D. Cal. 1998) (adopting the reasoning of Petrucelli, and noting that the Ninth Circuit has not addressed what factors a court should consider when deciding to exercise its discretion to extend time for service in the absence of a finding of good cause).

For the reasons described below, the complaint should be dismissed with prejudice for failure to state a claim upon which relief can be granted. Accordingly, it is unnecessary to determine whether plaintiff may be entitled to an extension of time in which to effect service of process and file a proof of service.

2. Eleventh Amendment immunity

The Eleventh Amendment bars suit in federal court against a state, state agency, or a state official in his or her

official capacity absent a valid abrogation of immunity by Congress or an express waiver of immunity by the State. See Idaho v. Coeur d' Alene Tribe of Idaho, 521 U.S. 261, 267-268 (1997); Seminole Tribe of Florida v. Florida, 517 U.S. 44, 53-54 (1996); Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 106 (1984); Romano v. Bible, 169 F.3d 1182 (9th Cir.), cert. denied, 528 U.S. 816 (1999); Pena v. Gardner, 976 F.2d 469, 473 (9th Cir. 1992); Greater Los Angeles Council on Deafness v. Zolin, 812 F.2d 1103, 1110
(9th Cir. 1987); see generally In re Jackson, 184 F.3d 1046, 1048-49 (9th Cir.1999), (holding that a court must resolve an Eleventh Amendment sovereign immunity issue before reaching the merits of the case, and may raise the issue sua sponte; noting that the State of California has not made a general waiver of its sovereign immunity).

The Board is an agency of the State of California, and therefore it is immune from plaintiff's federal and state claims for money damages under the Eleventh Amendment. See e.g., In re Mitchell, 209 F.3d 1111, 1115-16 (9th Cir. 2000) (holding that the Board was an agency of the state that enjoyed Eleventh Amendment immunity), abrogated on other grounds, Hibbs v. Department of Human Resources, 273 F.3d 844, 853 n.6 (9th Cir. 2001), petition for cert. filed, 70 U.S.L.W. 3597 {U.S. March 11, 2002); United States v. Boyce, 153 F .Supp.2d 1194, 1996 (S.D. Ca1. 2001) (holding that the Board was entitled to Eleventh Amendment immunity from a suit contesting state tax assessments and liens); Gardner v. United States, 1999 WL 164412, at *7 (D.D.C. 1999) (holding that the district court lacked subject matter jurisdiction over a suit alleging constitutional and statutory claims against the State of California and the Board regarding the disclosure of tax returns and tax information), aff'd, 213 F.3d 735 (D.C. Cir. 2000), cert. denied, 531 U.S. 1153 (2001); Richmond v. TRW Info Servs. Div., 1997 WL 1037886, at *4 (S.D. Cal. 1997) (holding that the Eleventh

Amendment barred claims under the FCRA against the State of California and the Board).

3. FCRA claim against the Board

The amended complaint alleges that the Board is liable under the FCRA as a person who furnishes information to credit reporting agencies. [FAC at 4-6]. See 15 U.S.C. §§ 1681a, 1681s-2. The FCRA provides a private right of action against a furnisher of information only if that person has received notice of a dispute from a credit reporting agency and has failed to comply with its statutory obligations upon receipt of such a notice. See 15 U .S.C. § 1681 s-2(b)-(d); Nelson v. Chase Manhattan Mortgage Corp., 282 F.3d 1057, 1058-1060 (9th Cir. 2002). Since plaintiff has not alleged any facts suggesting that the Board received any such notice from a credit reporting agency the amended complaint fails to state a claim under the FCRA.

4. FDCPA claim against the Board

The amended complaint alleges that the Board violated the FDCPA by collecting child support payments that plaintiff claims he did not owe, or that were not delinquent, at the time the collection activity occurred. [FAC at 6-8]. A child support obligation is not a "debt" within the meaning of the FDCP A, and therefore collection practices aimed at enforcing child support obligations are not within the scope of that statute. See 15 U.S.C. § 1692a(5); Mabe v. G.S. Servs. Ltd. Partnership, 32 F.3d 86, 88 (4th Cir. 1994) (holding that a child support obligation is not a "debt" within the meaning of the FDCP A); Campbell v. Baldwin, 90 F .Supp. 2d 754, 756-757 (E.D. Tex. 2000) (dismissing an FDCPA claim alleging that state officials harassed the plaintiff over child support payments he did not owe because child support payments are not " debts"). The FDCPA also exempts from its definition of "debt collector" any
state official or employee "to the extent that collecting or attempting to collect any debt is in the performance of his official duties[.]" 15 U.S.C. § 1692a(6)(C). Accordingly, the

amended complaint fails to state a claim under the FDCPA.

5. Section 1983 claims

The amended complaint alleges that defendants violated plaintiff's right to procedural due process by implementing unconstitutional procedures to establish and enforce child support obligations. Specifically, the complaint alleges that defendants' implementation of sections 19271 and 18670 of the California Revenue and Taxation Code deprived plaintiff of his procedural due process rights.

a. Absolute prosecutorial immunity

A prosecutor generally is immune from damages suits under section 1983. See Imbler v. Pachtman, 424 U.S. 409,431 (1976); Milstein v. Cooley, 257 F.3d 1004, 1007-1008 (9th Cir. 2001). Whether absolute immunity applies depends upon the nature of the alleged misconduct. See Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993); Burns v. Reed, 500 U.S. 478,485-86 (1991). Absolute immunity applies where a prosecutor's activities are "intimately associated with the judicial phase of the criminal process. ..." Imbler, 424 U.S. at 430; See Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675,678 (9th Cir. 1984) (stating that the test for applying absolute immunity "is whether the prosecutor performed a kind of act not manifestly or palpably beyond his authority, but rather having more or less connection with the general matters committed to his control or supervision.') (internal quotation marks and citations omitted). Thus, absolute immunity generally shields a prosecutor from suit for activities related to the initiation and presentation of criminal prosecutions, and where the prosecutor acts as an advocate for the state in judicial proceedings. Buckley, 509 U.S. at 272-273; Imbler, 424 U.S. at 431. Absolute immunity applies to a prosecutor's conduct as an advocate for the state whether performed during the course of a criminal or civil action. See Cooper v. Parrish, 203 F.3d 937, 947-948 (6th Cir.) (citing Schrob v. Catterson, 948 F.2d 1402, 1411

(3rd Cir. 1991) and Mendenhall v. Goldsmith, 59 F.3d 685, 691 (7th Cir.), cert. denied, 516 U.S. 1011 (1995)), cert. denied, 531 U.S. 877 (2000).

Absolute immunity also extends to a prosecutor's post-conviction or post-judgment advocacy for the state. See. e.g., Blakely v. United States, 276 F.3d 853,870-871 (6th Cir. 2002) ("The prosecutor's decision not to agree to vacate a civil forfeiture judgment, just as his rather than administrative conduct, and is covered by the absolute immunity doctrine.");
Carter v. Burch, 34 F.3d 257, 263 (4th Cir. 1994) (holding that absolute immunity protected a prosecutor's alleged misconduct while he was "handling the post-conviction motions and the
initial direct appeal" of the plaintiffs conviction because "[i]n these post-trial motions and preparations for appeal, [the defendant] was still functioning as an advocate for the State [A]lthough the trial had been completed, [the defendant's] functions in representing the State in [the plaintiffs] post-conviction motions and direct appeal very much implicated the judicial process"), cert. denied, 513 U.S. 1150 (1995); Demery v. Kuppennan, 735 F.2d 1139, 1142-1145 (9th Cir. 1984), cert. denied, 469 U.S. 1127 (1985) (holding that absolute immunity extended to a prosecutor's "post-trial handling of a case"); Younce v. Hurst, 173 F.Supp.2d 664, 668-669 (E.D. Mich. 2001) (noting that the "analytical key" to prosecutorial immunity is "advocacy," and holding that absolute immunity shielded a prosecutor who was "still acting as an advocate for the State in requesting and submitting" a post-conviction seizure order); Winters v. Palumbo, 512 F.Supp. 7,10 (E.D. Mo. 1980) (holding that a prosecutor enjoyed absolute immunity from damages claims for allegedly conspiring to delay the plaintiffs post-conviction hearing because he was an advocate for the state in the proceedings for state post-conviction relief, and "[t]his advocacy is, in effect, an extension of [the defendant's] prosecutorial pursuit of the criminal prosecution"). At all

times described in the complaint, enforcing and collecting child support obligations was within the scope of the duties of the Attorney General of the State of California and the county District Attorneys. See Cal. Fam. Code §§ 17304-17305, 17400, 17406, 17522; County of Lake v. Palla, 94 Cal.App.4th 418,422 n.5 (2001). Accordingly, defendants Lockyer and Stout are entitled to absolute prosecutorial immunity for their allegedly wrongful or mistaken attempts to collect child support payments from plaintiff.

b. Due process claims

The amended complaint alleges that defendants violated plaintiff's federal due process rights by "implementing unconstitutional procedures" to establish and enforce plaintiff's "presumed delinquent" child support obligations. [FAC at 10].

i. Pre-judgment procedures

The amended complaint alleges that the "pre-judgment child support procedures" employed by the County and the State of California violated plaintiffs due process rights, but no facts are alleged to support that claim. [FAC at 10]. In any event, if plaintiff seeks to mount a due process challenge to a child support order or judgment issued by a state court, this court would lack jurisdiction to review that judgment under the Rooker-Feldman doctrine, which bars a losing party in state court "from seeking what in substance would be appellate review of the state judgment in a United States District Court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." Bennett v. Yoshina, 140 F.3d 12187 1223 (9th Cir. 1998)(quoting Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994)), cert. denied, 525 U .5. 1103 (1999) ; see District of Co1umbia Court of Appeals v. Feldrnan, 460 U.S. 462, 476, 486 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); T.W. by Enk v. Brophy, 124 F.3d 893, 898 (7th Cir.1997) (applying Rooker-Feldman to dismiss a suit challenging a state child custody award) .Therefore, plaintiff s due

process challenge to the pre-judgment procedures used to establish his support obligation are barred.

ii. Post-judgment procedures

The amended complaint alleges that defendants deprived plaintiff of due process by employing California's levy and garnishment procedures to seize his funds held in a bank checking account. [FAC at 10-11]. In addition, the amended complaint alleges that sections 19271 and 18670 of the California Revenue and Taxation Code contain "vague and overbroad language" that does not comport with due process guarantees, and that those sections "lack any procedure or means (administrative or judicial) by which decisions are reviewed to determine their validity before the rights of presumed delinquent child support obligors" are violated. [FAC at 11-12].

The amended complaint fails to state a cognizable procedural due process claim based on California's post-execution procedures in general or as utilized by defendants utilized by defendants. First, courts have upheld the constitutionality of California's post-judgment execution procedures as applied to enforce child and spousal support obligations. See In re Marriage of Crookshanks, 41CalApp.3d 475, 478 (1974) (holding that the due process clause did not require notice or a hearing prior to the issuance of a writ of execution to collect unpaid child support because "[t]he judgment itself was rendered in a proceeding in which the debtor had an opportunity to be heard," and the debtor "'has the right to insist upon a satisfaction of judgment being filed and recorded on the register of actions as he makes payment"), appeal dismissed, 420 U.S. 985 (1975); Wyshakv. Wyshak, 70 CalApp. 3d 384, 388-393 (1977) (holding that notice was not required prior to a levy on a writ of execution to enforce a spousal support judgment because (1) the debtor had an adequate opportunity to be heard in the underlying proceedings; (2) the debtor has knowledge that post-judgment execution procedures may be employed to enforce a judgment; and (3) it is not unreasonable to

require the debtor to come forward with any defenses to payment after issuance of a writ; noting that other California courts had rejected due process attacks on state post-judgment execution procedures) (citing In re Crookshanks, 41 Ca. App. 3d at 478, Raigoza v. Sperl, 34 Cal. App. 3d 560,565-576 (1973), and Taylor v. Madigan, 53 Cal. App. 3d 943, 963 (1975)); Fockaert v. County of Humboldt, 1999 WL 30537, at *3 (N.D. Cal. 1999) (dismissing a claim alleging that a California district attorney violated the plaintiffs due process rights by levying on his bank accounts without prior notice to enforce a delinquent child support obligation because California law provides an adequate post-deprivation procedure to claim an exemption) (citing Cal. Civ. Proc. Code § 703.510).

Second, contrary to plaintiff's allegations, the procedures authorized by sections 19271 and 18670 of the Revenue and Taxation Code are not constitutionally defective. California law specifically provides that the local child support agency shall transfer child support delinquencies to the Franchise Tax Board for collection purposes in the form and manner and at the time prescribed by the Franchise Tax Board. Collection shall be made by the Franchise Tax Board in accordance with Section 19271 of the Revenue and Taxation Code. For purposes of this subdivision, "child support delinquency" means an arrearage or otherwise past due amount that accrues when an obligor fails to make any court ordered support payment when due, which is more than 60 days past due, and the aggregate amount of which exceeds one hundred dollars
($100).
Cal. Fam. Code § 17500(c). Section 19271(a)(2) of the Revenue and Taxation Code authorizes the Board to collect child support delinquencies" in any manner authorized under the law for collection of a delinquent personal income tax liability." The authorized means of enforcement include the filing and recordation of liens, the issuance of

warrants that have the force and effect of a writ of execution, and the issuance of earnings withholding orders. See Cal. Rev.& Tax. Code §§ 19221 et seq., Cal. Family Code §§ 5208, 5246.

Even though due process does not require prior notice to execute on an order or judgment for child support, see e.g., In re Marriage of Crookshanks, 41 Cal.App.3d at 478; Wyshak, 70 Cal.App. 3d at 388-393, section 19271 in fact provides for pre-deprivation notice and an opportunity to be heard:

At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement.

Cal. Rev. & Tax. Code § 19271(a)(2). Thus, even if notice and an opportunity to be heard were constitutionally required prior to enforcement of a child support order or judgment, plaintiffs due process challenge to section 19271 would fail.

Plaintiff s due process claim cannot be saved by construing the amended complaint to allege that defendants instituted a collection action without giving him the notice prescribed by section 19271(a)(2). That claim would fail because the unauthorized deprivation of property does not violate the due process clause if a meaningful state post-deprivation remedy for the loss is available. Hudson v. Palmer, 468 U.S. 517, 533, 536 (1984); Parratt v. Taylor, 451 U.S. 527, 541 (1981), overruled on other grounds by Daniels v. Williams, 474 U.S. 327, 330-31 (1986); Blueford v. Prunty, 108 F.3d 251,255-256 (9th Cir. 1997); Barnett v. Centoni, 31 F .3d 813, 816-17 (9th Cir. 1994) (per curiam) .The California Tort Claims Act provides an adequate post-deprivation remedy for the

unauthorized deprivation of property. Barnett, 31 F .3d at 817; see Cal. Gov't Code §§ 810-997.6. Therefore, plaintiff cannot state a federal due process claim based on section 19271(a)(2).

The other California Revenue and Taxation Code provision cited by plaintiff, section 18670, is inapposite because it concerns the procedure for serving a notice to withhold on third parties who possess or control property of a tax obligor.

Moreover, neither section 19271 nor section 18670 of the California Revenue and Taxation Code could reasonably be considered vague or overbroad. Not only are those statutory provisions specific and narrowly drawn, but they cannot be construed to proscribe any conduct or speech on the part of plaintiff. Thus, plaintiff's allegations of vagueness and overbreadth are misplaced and frivolous. In sum, the procedures employed by defendants did not violate plaintiff's procedural due process rights.

6. RICO claim

The amended complaint alleges that the Board and the County violated the RICO statute by "conduct[ing] or participat[ing] in the conduct of the affairs of the enterprise engaged in interstate commerce or affecting interstate commerce through a pattern of racketeering activity or through a pattern of collection of unlawful debt ..." [FAC at 17]. See 18 U.S.C. §§ 1961 et seq.

RICO's civil remedy section permits suit by persons injured in their business or property. Compton v. Ide, 732 F.2d 1429, 1433 (9th Cir. 1984), abrogated on other grounds, Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 149-150, 156-157 (1987); see 18 U.S.C. § 1964(c). To state a claim under RICO, plaintiff must allege facts establishing: "(1) conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity (known as 'predicate acts'); (5) causing injury to the plaintiffs 'business or property.'"

Grimmett v. Brown, 75 F.3d 506,510 (9th Cir. 1996), cert. dismissed, 519 U.S. 233 (1997); See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985).

Plaintiffs RICO claims against the Board and the County fail because "'government entities are incapable of forming [the] malicious intent' necessary to support a RICO action." Pedrina v. Chun, 97 F.3d 1296, 1300 (9th Cir. 1996) (summarily dismissing RICO claims against a municipality) (quoting Lancaster Community Hosp. v. Antelope Valley Hosp., 940 F.2d 397, 404 (9th Cir. 1991), cert. denied, 502 U.S. 1094 (199)), cert. denied, 520 U.S. 1268 (1997); see Lancaster Community Hosp., 940 F.2d at 404 (affirming summary judgment in favor of municipal entities on RICO claims predicated on alleged mail fraud because government entities cannot form the specific intent to deceive). The amended complaint alleges that the Board and the County committed "predicate acts" within the meaning of RICO by engaging in mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343. [FAC at 19-21]. See 18 U.S.C. § 1961 (1). Specific intent is an element of those offenses. See Orr v. Bank of America. NT & SA, 285 F.3d 764, 782 (9th Cir. 2002) (stating that specific intent is an element of mail and wire fraud under 18 U.S.C. §§ 1341 and 1343). Therefore, the amended complaint fails to state a RICO claim against the Board or the County as a matter of law.

Conclusion

As discussed above, plaintiff's amended complaint fails to state a claim upon which relief can be granted because (I) the Board enjoys Eleventh Amendment immunity from plaintiff's claims for money damages; (2) the amended complaint does not allege facts establishing that plaintiff has a private right of action against the Board under the FCRA; (3) the amended complaint does not state a claim under the FDCPA because child support is not a "debt" within the meaning of that statute; (4) absolute prosecutorial immunity shields Lockyer and Stout from plaintiff's claims for money damages; (5) plaintiff cannot

state a cognizable federal due process claim against defendants based on the allegedly defective pre- or post-judgment procedures used to establish or enforce his child support obligation; and (6) the amended complaint fails to state a RICO claim against the Board or the County because government entities cannot form the specific intent that is an element of such a claim.

Recommendation

As set forth at the beginning of this order, a pro se litigant should be permitted to amend his complaint unless it is absolutely clear that he can plead and prove no set of facts in support of claims. In this instance, it is clear that plaintiff cannot overcome the deficiencies in his amended complaint. The Board, Lockyer, and Stout are immune from all of the federal and state damages claims alleged in the amended complaint. In addition, plaintiff cannot state a cognizable damages claim under the FDCPA based on the enforcement of a child support order. Plaintiff's section 1983 claims for declaratory and injunctive relief are premised on defendants' alleged violations of plaintiff's due process rights in enforcing his child support obligation under sections 19271 and 18670 of the California Revenue and Taxation Code. [See FAC at 31-32]. Because plaintiff cannot state a federal due process claim based on defendants' compliance or noncompliance with the procedures set forth in those statutes, that claim also fails as a matter of law. Plaintiffs RICO claim against the Board and the County also fails as a matter of law.

Accordingly, it is recommended that this action be dismissed in its entirety with prejudice.

DATED: 5-21-2002

/s/

ANDREW J. WISTRICH
United States Magistrate Judge

Filed
Clerk, U.S. District Clerk
Aug 2 2002
Central District of California
By Deputy

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

BRAD R. JOHNSON,	}	
	}	
Plaintiff	}	
	}	
v.	}	**Case No. EDCV 02-319-GLT(AJW)**
	}	
FRANCHISE TAX BOARD, et al.	}	**ORDER ADOPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**
Respondent	}	

Pursuant to 28 U.S.C. 636(b)(1)(C), the court has reviewed the entire record in this action, and the attached Report and Recommendation of Magistrate Judge ("Report"). No objections to the report have been filed within the time allowed. Good cause appearing, the Court concurs with and adopts the findings of fact, conclusions of law, and recommendations contained in the Report.

IT IS SO ORDERED.

DATED: July 31, 2002

/s/

GARY L. TAYLOR
United States District Judge

FILED
April 21 2003
Cathy A. Catterson
Clerk, U.S. Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRAD R. JOHNSON,	}
	} No. 02-56580
Plaintiff-Appellant	}
	}
v	} D.C. No. CV-02-319-GLT
	}
FRANCHISE TAX BOARD, State of California; et al.,	} MEMORANDUM*
	}
Defendants - Appellees	}
	}

Appeal from the United States District Court
For the Central District of California
Gary L. Taylor, District Judge, Presiding

Submitted April 7, 2003**

Before: RYMER, KLEINFELD, and FISHER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Brad R. Johnson appeals pro se the district court's sua sponte Fed. R. Civ. P. 12(b)(6) dismissal of his action alleging violations of the Federal Credit Reporting Act ("FCRA"), the Fair Debt Collection Practices Act ("FDCPA"), the Racketeering Influenced and Corrupt Organizations Act ("RICO"), the Fourteenth Amendment, and state tort law. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo dismissals for failure to state a claim, *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987), and for abuse of discretion a decision to change venue, *King v. Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992) (per curiam). We may affirm on any ground supported by the record. *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir. 1998).

The Illinois district court did not abuse its discretion when it transferred Johnson's case to the Central District of California because no events alleged in the complaint took place in Illinois, a substantial part of the events took place in California, and all defendants resided in California. *See King*, 963 F.2d at 1304.

The district court properly dismissed Johnson's claim under the FCRA because the provision he cited, 15 U.S.C. § 1681s-2(a), may only be enforced by federal and state officials. *See Nelson v. Chase Manhattan Mortgage Corp.*, 282 F.3d 1057, 1059 (9th Cir. 2002).

The district court properly dismissed Johnson's claim under the FDCPA because the Franchise Tax Board is not a "debt collector" as defined by the statute. *See* 15 U.S.C. § 1692a(6)(C).

The district court properly dismissed Johnson's RICO claim because government entities are incapable of forming the malicious intent necessary to support a RICO action. See *Pedrina v. Chun*, 97 F.3d 1296, 1300 (9th Cir. 1996).

The district court properly dismissed Johnson's section 1983 claim alleging California's pre-judgment child support procedures violated due process because any review would necessarily affect the child support order or

judgment issued by the state court. *See Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2000).

The district court properly dismissed Johnson's 42 U.S.C. § 1983 claim alleging California's post judgment child support procedures violated due process because the procedures provide for notice to be sent to an individual at least 20 days before garnishment of his funds and a meaningful state, post-deprivation remedy for the loss is available. *See Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1317 (9th Cir. 1989).

The panel has no basis to review the district court's denial of Johnson's motion to alter or amend the judgment because it was not submitted with his appeal. *See In re O'Brien*, 312 F.3d 1135, 1137 (9th CIT. 2002).

AFFIRMED.

FILED
July 1 2003
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRAD R. JOHNSON,	}
	} No. 02-56580
Plaintiff-Appellant	}
	}
v .	} D.C. No. CV-02-319-GLT
	} Central California
FRANCHISE TAX BOARD,	} (Riverside)
State of California; et al.,	}
	}
Defendants - Appellees	} ORDER
	}

Before: RYMER, KLEINFELD, and FISHER, Circuit Judges.

The panel has voted to deny Johnson's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to hear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and petition for rehearing en banc are denied.

No further filings shall be accepted in this closed appeal.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
DANVILLE/URBANA DIVISION

BRAD R. JOHNSON, Plaintiffs, v. FRANCHISE TAX BOARD, STATE OF CALIFORNIA; OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; BILL LOCKYER, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA; DENNIS L. STOUT, OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA; and COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, Defendants	**FILED** July 30 2001 John M. Waters, Clerk U.S. DISTRICT COURT CENTRAL DISTRICT OF ILLINOIS URBANA, IL Case No. 01-2145 AFFIDAVIT

AFFIDAVIT OF PLAINTIFF OPPOSING DEFENDANTS' MOTION TO DISMISS COMPLAINT FOR IMPROPER VENUE, OR IN THE ALTERNATIVE, MOTION FOR CHANGE OF VENUE

Dr. Brad R. Johnson, being first duly sworn, says:

1. I am the Plaintiff in the above-entitled action.
2. I have personal knowledge of the matters set forth in this affidavit.
3. The following facts are relevant to the issues involved in the above-entitled action.
4. I make this affidavit in opposition to Defendant's Motion to Dismiss Complaint for Improper Venue, or in the Alternative, Motion for Change of Venue.
5. I have known Viki S. Hollander for 23 years, since March 1978.
6. I was married to Viki S. Hollander from January 1978 through April 1986.
7. Together, Viki S. Hollander and I have a beautiful daughter, Holly Leora Johnson, who is currently (i) 18 years old, (ii) a recent graduate of high school, and (iii) in Hawaii as a graduation present from me.
8. Viki S. Hollander and I divorced in May 1986 in Multnomah County, State of Oregon. As a result, I am the obligor of a 1986 Multnomah County, State of Oregon, Child Support Order for whom Viki S. Hollander is the obligee, which is, in part, the subject of this suit. This order is the only order of which I am aware, since Viki S. Hollander and I have never returned to court, opting instead to work out our differences.
9. For over one year, I have been a target and victim of Defendants' unconstitutional, criminal and tortious schemes and artifices to defraud me of my property, as follows.
10. On July 7, 2000, *without any actual or constructive notice to me*, the State of California, Franchise Tax Board, Child Support Collections issued an ORDER TO WITHHOLD (any credits or payments owing to Brad R. Johnson) under authorization of Sections 19271 and 18670 of the California Revenue and Taxation Code to U.S. Bank, Attn: Attachments &

Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250 of DEBTOR, Brad R. Johnson. See Exhibit I, infra. This July 7, 2000 ORDER TO WITHHOLD (any credits or payments owing to Brad R. Johnson) under authorization of Sections 19271 and 18670 of the California Revenue and Taxation Code served upon U.S. Bank issued by the State of California, Franchise Tax Board, Child Support Collections, was initiated at the request of the District Attorney's Office of San Bernardino County based upon an Allegation of Fact that Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250.

11. In fact, I do not have (*and have never had*) a DELINQUENT FAMILY SUPPORT DEBT.
12. The absolutely false Allegation of Fact that I have a DELINQUENT FAMILY SUPPORT DEBT was made (and is currently being made) by the District Attorney's Office of San Bernardino County.
13. Before July 15, 2000, I had no *actual or constructive notice* that the District Attorney's Office of San Bernardino County was making an Allegation of Fact that I have a DELINQUENT FAMILY SUPPORT DEBT.
14. On July 12, 2000, *without any actual or constructive notice to me*, the State of California, Franchise Tax Board, Child Support Collections served a Garnishment/State Levy upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250 of DEBTOR, Brad R. Johnson. See Exhibits I & II, which are incorporated herein by reference as if fully set forth.
15. The Allegation of Fact that I have a DELINQUENT FAMILY SUPPORT DEBT is absolutely false,

where such allegation is defamation (i) exposing me to public hatred, contempt, ridicule and shame and (ii) depriving me of the benefits of public confidence within Kankakee County, State of Illinois and the surrounding area and where the published words used were reasonably calculated, by taking into consideration all of the facts and circumstances, to produce (i) harm to my credit record and (ii) damage to my personal and business reputation and (iii) business standing in the business community within Kankakee County, State of Illinois and the surrounding area.

16. Upon receipt of the Garnishment/State Levy served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250 of DEBTOR, Brad R. Johnson, U.S. Bank on July 12, 2000 DEDUCTED and WITHHELD $1,250 from the account of Brad R. Johnson (Account Number 153604326949), causing the balance of such account to be reduced to a deficit (negative) $280.67. See Exhibits I & II, supra. The effect of such Garnishment/State Levy served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank (i.e., the taking of $1,250 from my bank account) is a violation of the U.S. Constitutional Guarantee of Procedural Fairness flowing from the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. Because the situs of my U.S. Bank account is my place of domicile (i.e., Kankakee County, State of Illinois), the locus criminis or the locus in quo is Kankakee County, State of Illinois. Also, U.S. Bank conducts business in the State of Illinois.

17. On Saturday, July 15, 2000, I received a letter from U.S. Bank dated July 12, 2000 (and a copy of the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD dated July 7, 2000) notifying me that U.S. Bank on July 12, 2000 DEDUCTED and WITHHELD $1,250 from the account of Brad R. Johnson (Account Number 153604326949) based upon a Garnishment/State Levy served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250 of DEBTOR, Brad R. Johnson. See Exhibits I & II, supra.
18. Additional Proximate Consequences to U.S. Bank receiving a Garnishment/State Levy (served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $1,250 of DEBTOR, Brad R. Johnson), the locus criminis or the locus in quo of which is Kankakee County, State of Illinois, include the following.
    (a) U.S. Bank DEDUCTED and WITHHELD $35 as a Garnishment/State Levy fee from the account of Brad R. Johnson (Account Number 153604326949), causing the balance of such account to be reduced.
    (b) For the purpose of identifying the origin of the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD, received by me on Saturday, July 15, 2000, I made multiple frantic and desperate calls on Saturday, July 15, 2000 to:

(1) Eleanor Johnson (Mother) at (281) 852-2502. [In talking to my Mother, I was distraught and tormented as to how this set of circumstances could have arisen. In addition, I was worried about how checks that I had written against my U.S. Bank account (Account Number 153604326949) would clear after U.S. Bank DEDUCTED and WITHHELD $1,250 from my account (Account Number 153604326949), causing the balance of such account to be reduced to a deficit (negative) $280.67. Also, I was distressed as to how I was going to take care of these problems (which surfaced on Saturday, July 15, 2000 when I received the aforementioned letter from U.S. Bank dated July 12, 2000 and a copy of the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD dated July 7, 2000) before going on my family's 5-week vacation scheduled to begin on Monday, July 17, 2000.]

(2) Ellen Boardman (Ex-Spouse) at (503) 639-4412. No answer.

(3) U.S. Bank (Legal Department) at (877) 247-9468. No answer.

(4) U.S. Bank (Customer Service) at (800) 872-2657. I talked to Janet and Terry in 2 separate telephone conversations. I pleaded with each of them to allow me access to my funds in U.S. Bank (Account Number 153604326949), since I had already written checks against those funds, which were about to clear. I assured each of them that the Allegation of Fact that Dr. Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT is absolutely false. They each responded in a condescending and despiteful tone that Brad R. Johnson owed back child support and, accordingly, the State of California, Franchise Tax Board, Child Support Collections had garnished his bank account. As a result of these conversations, I felt humiliated and subjected to ridicule. I am a University Professor of Accounting at Governors State University (an Illinois State University). As such, I am held to a higher standard in my personal and professional life, where having a DELINQUENT FAMILY SUPPORT DEBT may subject

my person to disciplinary action or a rejection of tenure. Furthermore, I am an Oregon C.P.A., where having a DELINQUENT FAMILY SUPPORT DEBT may subject me to disciplinary action.

19. For the purpose of identifying the origin of the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD, received by me on Saturday, July 15, 2000, I sent a frantic and desperate E-Mail on Saturday, July 15, 2000 to Viki S. Hollander.
20. For the purpose of identifying the origin of the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD, received by me on Saturday, July 15, 2000, multiple frantic and desperate calls were made on Monday, July 17, 2000 to:
    (a) State of California, Franchise Tax Board, Child Support Collections at (916) 845-6700 at approximately 9:30 A.M. (C.S.T.). [I talked to a female representative of the State of California, Franchise Tax Board, Child Support Collections and pleaded with such representative to allow me access to my funds in my U.S. Bank (Account Number 153604326949), since I had already written checks against those funds, which were about to clear. In addition, I assured her that the Allegation of Fact that Dr. Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT is absolutely false. She responded in a condescending and despiteful tone that I owed back child support and, as a result, the State of California, Franchise Tax Board, Child Support Collections had garnished my bank account. Furthermore, the female representative of the State of California,

Franchise Tax Board, Child Support Collections said that the Garnishment/State Levy had had its intended effect and that there was nothing that she could do. She said that I would have to contact the District Attorney's Office of San Bernardino County to address the matter of DELINQUENT CHILD SUPPORT. Furthermore, she said that any release of funds issued by the State of California, Franchise Tax Board, Child Support Collections would have to be initiated by the District Attorney's Office of San Bernardino County. As a result of this conversation, I felt humiliated and subject to ridicule.]

(b) District Attorney's Office of San Bernardino County at (909) 987-9984 at approximately 11:00 A.M. (C.S.T.).[I talked to a female representative of the District Attorney's Office of San Bernardino County and pleaded with such representative to allow me access to my funds in U.S. Bank (Account Number 153604326949), since I had already written checks against those funds, which were about to clear. In addition, I assured her that the Allegation of Fact that Dr. Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT is absolutely false. She responded in a condescending and despiteful tone that I owed back child support and, as a result, the State of California, Franchise Tax Board, Child Support Collections had garnished my bank account. With regard to the request for a release of funds, after talking to her supervisor, she said that such release would be processed, BUT THAT, ACCORDING TO THE DISTRICT

ATTORNEY'S OFFICE OF SAN BERNARDINO COUNTY, BRAD R. JOHNSON STILL OWES BACK CHILD SUPPORT. In fact, she said that the amount owed had increased from $1,250 to $1,500. To extinguish the indebtedness, she said that I would have to either (i) prove that payments were made by providing canceled checks or (ii) have the obligee of the child support order state that I have paid. My conversation with the female representative of the District Attorney's Office of San Bernardino County ended with my voluntarily offering my current address and telephone number to the District Attorney's Office of San Bernardino County JUST IN CASE THE DISTRICT ATTORNEY'S OFFICE OF SAN BERNARDINO COUNTY MIGHT WANT TO CONTACT ME SOME TIME IN THE FUTURE. As a result of this conversation, I felt humiliated and subjected to ridicule.]

21. Because Check Number 396 issued to Bank United (Home Mortgage) was likely to clear (and in fact did clear) on July 17, 2000, at least $1,105 must be deposited into U.S. Bank (Account Number 153604326949) on July 17, 2000. After I finished my telephone conversation with the District Attorney's Office of San Bernardino County, it was 11:30 A.M. I had until 3:00 P.M. on Monday, July 17, 2000 to cover any checks that would clear that day. Accordingly, I took all of my family's vacation cash as well as all of my disposable cash from my other checking account and made a deposit of $1,110 to my U.S. Bank (Account Number 153604326949) at 2:00 P.M. on Monday, July 17, 2000. I accomplished this by traveling to the North Chicago suburb of Lincoln Park, where a U.S. Bank branch is situated.

22. Given that (i) all of my family's vacation cash was spent and (ii) future time, energy and money would have to be devoted to addressing the Allegation of Fact made by the District Attorney's Office of San Bernardino County that I have a DELINQUENT FAMILY SUPPORT DEBT, I felt distraught, tormented, distressed, humiliated and ridiculed and believed that I had no choice but to cancel my family's 5-week vacation. To accomplish this I had to cancel my family's reservation:
    (a) at the Franklin Street Beach House in Seaside, Oregon from July 21, 2000 to July 28, 2000;
    (b) at the beach in Fort Stevens, Oregon from July 28, 2000 to August 1, 2000;
    (c) at the Jantzen Beach R.V. Park in Portland, Oregon from August 1, 2000 to August 6, 2000; and
    (d) at Yellowstone National Park from August 8, 2000 to August 18, 2000;.
23. Before July 30, 2000, neither U.S. Bank nor the State of California, Franchise Tax Board, Child Support Collections nor the District Attorney's Office of San Bernardino County notified me of the effective release of my funds subject to Garnishment/State Levy by the State of California, Franchise Tax Board, Child Support Collections under the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD to U.S. Bank dated July 7, 2000 to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT of DEBTOR, Brad R. Johnson. Accordingly, I sent to (i) the Franchise Tax Board by FedEx Priority Overnight on July 31, 2000 (5574782625) and (ii) the District Attorney's Office - Child Support by FedEx Priority Overnight on July 31, 2000 (5574782636) a Demand Letter dated July 30, 2000 based upon their joint violation of my civil rights under the Fifth and Fourteenth Amendments to the

Constitution of the United States. See Exhibits III & IV, which are incorporated herein by reference as if fully set forth.

24. On May 8, 2001, *without any actual or constructive notice to me*, the State of California, Franchise Tax Board, Child Support Collections *issued* an ORDER TO WITHHOLD (any credits or payments owing to Brad R. Johnson) under authorization of Sections 19271 and 18670 of the California Revenue and Taxation Code to U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225 of DEBTOR, Brad R. Johnson. See Exhibit V, infra. This May 8, 2001 ORDER TO WITHHOLD (any credits or payments owing to Brad R. Johnson) under authorization of Sections 19271 and 18670 of the California Revenue and Taxation Code served upon U.S. Bank issued by the State of California, Franchise Tax Board, Child Support Collections, was initiated at the request of the District Attorney's Office of San Bernardino County based upon an Allegation of Fact that Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225.
25. In fact, I do not have (*and have never had*) a DELINQUENT FAMILY SUPPORT DEBT.
26. The absolutely false Allegation of Fact that Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT of $4,225 was made (and is currently being made) by the District Attorney's Office of San Bernardino County and by the State of California, Attorney General's Office – Child Support (after May 31, 2001), even though such offices have notice of the falsity of such Allegation of Fact.
27. Before May 21, 2000, I had no *actual or constructive notice* that the District Attorney's Office of San Bernardino County was making an Allegation of

Fact that I have a DELINQUENT FAMILY SUPPORT DEBT of $4,225.

28. On May 17, 2000, *without any actual or constructive notice to me*, the State of California, Franchise Tax Board, Child Support Collections served a Garnishment/State Levy upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225 of DEBTOR, Brad R. Johnson. See Exhibits V & VI, which are incorporated herein by reference as if fully set forth.
29. The Allegation of Fact that Dr. Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT is absolutely false, where such allegation is defamation (i) exposing me to public hatred, contempt, ridicule and shame and (ii) depriving me of the benefits of public confidence within Kankakee County, State of Illinois and the surrounding area and where the published words used were reasonably calculated, by taking into consideration all of the facts and circumstances, to produce (i) harm to my credit record and (ii) damage to my personal and business reputation and (iii) business standing in the business community within Kankakee County, State of Illinois and the surrounding area.
30. Upon receipt of the Garnishment/State Levy served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225 of DEBTOR, Brad R. Johnson, U.S. Bank on May 17, 2001 DEDUCTED and WITHHELD $60 from the account of Brad R. Johnson (Account Number 153604326949), causing the balance of such account to be reduced to a

deficit (negative) $3.50. See Exhibits V & VI, supra. The effect of such Garnishment/State Levy served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank (i.e., the taking of $60 from my bank account) is a violation of the U.S. Constitutional Guarantee of Procedural Fairness flowing from the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution. Because the situs of my U.S. Bank account is my place of domicile (i.e., Kankakee County, State of Illinois), the locus criminis or the locus in quo is Kankakee County, State of Illinois.

31. On Monday, May 21, 2001, I received a letter from U.S. Bank dated May 17, 2001 (and a copy of the CHILD SUPPORT COLLECTION ORDER TO WITHHOLD dated May 8, 2001) notifying me that U.S. Bank on May 17, 2001 DEDUCTED and WITHHELD $60 from the account of Brad R. Johnson (Account Number 153604326949) based upon a Garnishment/State Levy served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225 of DEBTOR, Brad R. Johnson. See Exhibits V & VI, supra.
32. Additional Proximate Consequences to U.S. Bank receiving a Garnishment/State Levy (served by the State of California, Franchise Tax Board, Child Support Collections upon U.S. Bank, Attn: Attachments & Garnishments, P.O. Box 14129, Portland, OR 97214, to enforce payment of a DELINQUENT FAMILY SUPPORT DEBT in the amount of $4,225 of DEBTOR, Brad R. Johnson), the locus criminis or the locus in quo of which is Kankakee County, State of Illinois, include the following.

(a) On or about Friday, May 25, 2001, I called the Franchise Tax Board at (916) 845-6700 to inform the Franchise Tax Board, Child Support Collections of its error. Employees of the Franchise Tax Board responded by stating:

- The Franchise Tax Board cannot take any action in resolving such dispute.
- I must contact the District Attorney's Office - Child Support to address the matter of DELINQUENT CHILD SUPPORT, where any release of funds issued by the Franchise Tax Board, Child Support Collections would have to be initiated by the District Attorney's Office.

(b) During the weeks ending May 25, 2001 and June 1, 2001, I repeatedly attempted to call the San Bernardino County District Attorney's Office - Child Support, but the telephone line was repeatedly busy.

(c) During the week ending on July 20, 2001, I applied to refinance my second mortgage with Kankakee Federal Savings Bank, attempting to receive a cash-out of $8,000. My application was denied because my credit report included a delinquent child support obligation item in the amount of $4,225. On Friday, July 27, 2001, I met with personnel from Kankakee Federal Savings Bank. I assured each of them that the Allegation of Fact that Dr. Brad R. Johnson has a DELINQUENT FAMILY SUPPORT DEBT is absolutely false and that I was a valued member of the community. They each responded in an indignant, despiteful, and dispiteous manner that my credit report showed that I owed back child

support of $4,225 and on that basis my credit application was rejected. They suggested that I take the issue up with the source of the information. I stated that I had, but to no avail. As a result of these conversations, I felt humiliated and subjected to ridicule. Up until this point in time, I was a valued member of the community. I am a University Professor of Accounting at Governors State University (an Illinois State University). As such, I am held to a higher standard in my personal and professional life, where having a DELINQUENT FAMILY SUPPORT DEBT may subject my person to disciplinary action or a rejection of tenure. Furthermore, I am an Oregon C.P.A., where having a DELINQUENT FAMILY SUPPORT DEBT may subject me to disciplinary action.

/s/

Dr. Brad R. Johnson, Plaintiff Pro Se
935 S. Wildwood Avenue
Kankakee, IL 60901
(708) 534-4971

Subscribed and sworn to before me on July 30, 2001.

_____/s/_____

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

DANVILLE/URBANA DIVISION

BRAD R. JOHNSON, Plaintiff v. FRANCHISE TAX BOARD, STATE OF CALIFORNIA Defendant OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA Defendant BILL LOCKYER, ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, STATE OF CALIFORNIA Defendant DENNIS L. STOUT OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA Defendant	Civil Action, File No. 01-2145 AFFIDAVIT

OFFICE OF THE DISTRICT ATTORNEY, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA	
Defendant	
COUNTY OF SAN BERNARDINO,STATE OF CALIFORNIA	
Defendant	

AFFIDAVIT OF VIKI S. HOLLANDER OPPOSING DEFENDANT'S MOTION TO DISMISS COMPLAINT FOR IMPROPER VENUE, OR IN THE ALTERNATIVE, MOTION FOR CHANGE OF VENUE

Viki S. Hollander, being first duly sworn, says:

1. I have personal knowledge of the matters set forth in this affidavit.
2. The following facts are relevant to the issues involved in the above-entitled action.
3. I make this affidavit in opposition to Defendant's motion to dismiss complaint for improper venue, or in the alternative, motion for change of venue.
4. I have known the Plaintiff for 23 years, since March 1978.
5. I was married to Plaintiff from January 1979 through April 1986.
6. Together, Plaintiff and I have a beautiful daughter, Holly Leora Johnson, who is currently (i) 18 years old, (ii) a recent graduate of high school, and (iii) in Hawaii as a graduation present from her father (Plaintiff).

7. Plaintiff and I divorced in May 1986 in Multnomah County, State of Oregon. As a result, I am the obligee of a 1986 Multnomah County, State of Oregon, Child Support Order for whom Brad R. Johnson (Plaintiff) is the obligor, which is, in part, the subject of this suit. This order is the only order of which I am aware, since Plaintiff and I have never returned to court, opting instead to work out our modifications.
8. On or about August 1993, I contacted San Bernardino County's District Attorney's Office and requested such office to make an inquiry as to Plaintiff's current wage and how to obtain an increase in child support for our daughter. At such time, I was neither having difficulty collecting my child support payments from Plaintiff nor was Plaintiff delinquent in his child support obligation. I made these facts clear to the District Attorney that I spoke to at that time.
9. On or about October 1993, I contacted the District Attorney's Office and canceled the case that was opened in August 1993 by making such request to the person to whom I made the initial request, where such person agreed to cancel the case. Additionally, I thanked the District Attorney for his assistance with the wage inquiry letter he sent to my daughter's father's employer. The letter was sufficient for us to work out an informal modification to the child support without further assistance from his office. I stated he could close the case.
10. Occasionally, during the next 6 years, from October 1993 through December 1999, I received notices from the District Attorney's Office of San Bernardino County stating that unless I contacted such office within a specified period of time, my case would be closed. In response to these notices, I did nothing. I had canceled the case and I

concluded that whatever remained as a remnant of the old case would be terminated within a short period of time, as expressly stated by the District Attorney's Office of San Bernardino County.

11. In early 2000, I again received some notice from the District Attorney's Office of San Bernardino. In response, I wrote on the response form that I did not need any help collecting my child support and I sent this form back to the District Attorney's Office of San Bernardino County.
12. From November 1993 through June 2000, I never had any direct contact with any individual from the District Attorney's Office of San Bernardino County.
13. In July 2000, I received a wire communication from Plaintiff stating that the District Attorney's Office of San Bernardino County was maintaining the position that Plaintiff is delinquent in his child support obligation. In response, On July 28, 2000, I stated by wire communication to Crystal Tucker of the District Attorney's Office of San Bernardino County - Child Support that:
    (a) the District Attorney's Office of San Bernardino County - Child Support was billing Plaintiff for child support in error,
    (b) Plaintiff was not delinquent in his child support obligation, and
    (c) the case should be closed.
14. Other than the wage inquiry performed in September 1993, I have no direct knowledge of any action taken by the District Attorney's Office of San Bernardino County that relates to my 1986 Multnomah County, State of Oregon, Child Support Order.
15. I did not approve of nor do I acquiesce in any action taken by the District Attorney's Office of San Bernardino County that relates to my 1986 Multnomah County, State of Oregon, Child

Support Order other than the wage inquiry performed in September 1993. Thus, any action taken by the District Attorney's Office of San Bernardino County that relates to my 1986 Multnomah County, State of Oregon, Child Support Order, other than the wage inquiry performed in September 1993, was accomplished without my prior approval and without my knowledge.

16. I state unequivocally that Plaintiff (Brad R. Johnson) does not have (*and has never had*) a delinquent family support debt in relation to my 1986 Multnomah County, State of Oregon, Child Support Order of $250 per month. In fact, in July 2000, I had payments of child support at a rate of $500 per month through November 2000.

_____/s/_____
Viki S. Hollander
1596 Redding Way
Upland, CA 91786
(909) 985-9548

Subscribed and sworn to before me on July 27, 2001.

_____/s/_____

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

CONSTITUTIONAL PROVISIONS,

U.S. Const. Art. III Section 2, cl. 1: Subjects of jurisdiction

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. Amend. V: Due process of law

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. XIV Sec. 5: Power to enforce amendment

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

STATUTES

18 U.S.C. Section 1341: Frauds and swindles
Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $ 1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. Section 1343: Fraud by wire, radio, or television
Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both. If

the violation affects a financial institution, such person shall be fined not more than $ 1,000,000 or imprisoned not more than 30 years, or both.

28 U.S.C. Section 1254(1): Courts of appeals; certiorari
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. Section 1291: Final decisions of district courts
The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title [28 USCS §§ 1292(c), (d), 1295].

28 U.S.C. Section 1294(1) Circuits decisions reviewable
Except as provided in sections 1292(c), 1292(d), and 1295 of this title, appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows:

(1) From a district court of the United States to the court of appeals for the circuit embracing the district;

28 U.S.C. Section 1343(a)(3): Civil rights and elective franchise
(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State

law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

28 U.S.C. Section 1391(a)&(b): Venue generally
(a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.
(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

28 U.S.C. Section 1404(a): Change of venue
(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

28 U.S.C. Section 1406(a): Cure or waiver of defects
(a) The district court of a district in which is filed a case laying venue in the wrong division or district shall

dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

42 U.S.C. Section 1983: Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

RULES

Fed.R.Civ.P. 15(a): Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original

pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Fed.R.Civ.P. 72(b): Magistrate Judges; Pretrial Orders
(b) Dispositive Motions and Prisoner Petitions. A magistrate judge assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate judge, and a record may be made of such other proceedings as the magistrate judge deems necessary. The magistrate judge shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

US CODE - CHILD SUPPORT ENFORCEMENT

TITLE **42.** THE PUBLIC HEALTH AND WELFARE
CHAPTER 7. SOCIAL SECURITY ACT
TITLE IV. GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR **CHILD**-WELFARE SERVICES
PART D. **CHILD SUPPORT** AND ESTABLISHMENT OF PATERNITY

42 USCS § 651 (2003) Authorization of appropriations

For the purpose of **enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living,** locating noncustodial parents, establishing paternity, obtaining child and spousal support, and **assuring that assistance in obtaining support will be available** under this part [42 USCS §§ 651 et seq.] **to all children** (***whether or not eligible for assistance*** under a

State program funded under part A [42 USCS §§ 601 et seq.]) ***for whom such assistance is requested,*** there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part [42 USCS §§ 651 et seq.]. [Italics, underline, and bold added.]

42 USCS § 652 (2003) - Duties of Secretary

. . .

(h) **Requirement of prompt State response to requests for child support assistance.** The standards required by subsection (a)(1) shall include **standards establishing time limits** governing the period or periods within which a State **must accept and respond to requests** (from States, jurisdictions thereof, or **individuals who apply for services** furnished by the State agency under this part [42 USCS §§ 651 et seq.] or with respect to whom an assignment pursuant to section 408(a)(3) [42 USCS § 608(a)(3)] is in effect) **for assistance in** establishing and **enforcing support orders**, including ***requests to*** locate noncustodial parents, establish paternity, and ***initiate proceedings to*** establish and ***collect child support*** awards.

(i) **Prompt State distribution of amounts collected as child support.** The standards required by subsection (a)(1) shall include *standards establishing time limits governing the period or periods within which a State must distribute*, in accordance with section 457 [**42** USCS § 657], **amounts collected as child support** pursuant to the State's plan approved under this part [**42** USCS §§ 651 et seq.]. . . .

(l) **Facilitation of agreements.** The Secretary, through the Federal Parent Locator Service, may aid State agencies providing services under State programs operated pursuant to this part [42 USCS §§ 651 et seq.] and **financial institutions** doing business in two or more States in reaching **agreements regarding the receipt from such institutions, and the transfer to the State agencies, of information** that may be provided pursuant to section 466(a)(17)(A)(i) [**42** USCS § 666(a)(17)(A)(i)] . . . [Italics and bold added.]

42 USCS § 654 (2003) - State plan for child and spousal support

A State plan for child and spousal **support** ***must***--

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that the State will--

(A) **provide services relating to** the establishment of paternity or the establishment, modification, or ***enforcement of child support*** obligations, as appropriate, under the plan **with respect to--**

(i) each child for whom (I) assistance is provided under the State program funded under part A of this title [**42** USCS §§ 601 et seq.], (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this title [**42** USCS §§ 670 et seq.], (III) medical assistance is provided under the State plan approved under title XIX [**42** USCS §§ 1396 et seq.], or (IV) cooperation is required pursuant to section 6(l)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(1)), unless, in accordance with paragraph (29), good cause or other exceptions exist;

(ii) ***any other child, if an individual applies for such services with respect to the child;*** and

(B) enforce any **support** obligation established with respect to--

(i) a **child** with respect to whom the State provides services under the plan; or

(ii) the custodial parent of such a **child;**

. . .

(8) **provide that, for the purpose of** establishing parentage, establishing, setting the amount of, modifying, or

enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 463(d)(1) [**42** USCS § 653(d)(1)] **the agency administering the plan will establish a service to** ***locate parents utilizing--***

(A) all sources of information and available records; and

(B) the **Federal Parent Locator Service** established under section 453 [**42** USCS § 653], -

and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 453 and 463 [**42** USCS §§ 653, 663] to the authorized persons specified in such sections for the purposes specified in such sections;

. . .

(11) (A) ***provide that amounts collected as support shall be distributed*** as provided in section 457 [**42** USCS § 657];

. . .

(18) ***provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury*** as set forth in section 464 [**42** USCS § 664], and ***take all steps necessary to implement and utilize such procedures;***

. . .

(20) provide, to the extent required by section 466 [**42** USCS § 666], that the State (A) shall have in effect all of the laws to **improve child support enforcement effectiveness** which are referred to in that section, and (B) **shall implement the procedures which are prescribed in or pursuant to such laws;**

. . .

(26) **have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties . . .**

(31) ***provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 452(k) [42 USCS § 652(k)],***

determinations that individuals owe arrearages of child support in an amount exceeding $ 5,000, under which procedure--

(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require. . . [Italics and bold added.]

Act Aug. 22, 1996, P.L. 104-193, Title III, Subtitle E, § 395(a)-(c), 110 Stat. 2236, substituted paragraph (4) as stated above.

42 USCS § 654b (2003) - Collection and Disbursement of Support Payments

(a) **State disbursement unit.**

(1) In general. In order for a State to meet the requirements of this section, the State agency must establish and operate a unit (which shall be known as the "State disbursement unit") for the collection and disbursement of payments under **support** orders--

(A) in all cases being enforced by the State pursuant to section 454(4) [42 USCS § 654(4)]; and

. . .

(b) **Required procedures.** The State disbursement unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical, for the collection and disbursement of **support** payments, including procedures-

(1) for receipt of payments from parents, employers, and other States, and for disbursements to custodial parents and other obligees, the State agency, and the agencies of other States;

(2) for accurate identification of payments;

(3) *to ensure prompt disbursement of the custodial parent's share of any payment*; and

. . .

(c) **Timing of disbursements.**

(1) In general. Except as provided in paragraph (2), *the State disbursement unit shall distribute all amounts payable* under section 457(a) [**42** USCS § **657**(a)] *within 2 business days after receipt from the employer or other source of periodic income, if sufficient information identifying the payee is provided.* [Italics and bold added.]

42 USCS § 657 (2003) - Distribution of Collected Support

(a) In general. Subject to subsections (d) and (e), *an amount collected on behalf of a family as support by a State pursuant to a plan* approved under this part [**42** USCS §§ 651 et seq.] *shall be distributed as follows*:

. . .

(3) **Families that never received assistance. In the case of any other family, the State shall distribute the amount so collected to the family.**

42 USCS § 666 (2003) - Requirement of Statutorily Prescribed Procedures to Improve Effectiveness of Child Support Enforcement

(a) Types of procedures required. In order to satisfy section 454(20)(A) [42 USCS § 654(20)(A)], each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part [**42** USCS §§ 651 et seq.]:

. . .

(2) **Expedited administrative and judicial procedures** (including the procedures specified in subsection (c)) for establishing paternity and for establishing, modifying, and **enforcing support** obligations.

. . .

(4) Liens. Procedures under which--

(A) liens arise by operation of law against real and personal property for amounts of overdue **support** owed by a noncustodial parent who resides or owns property in the State; and . . .

(7) **Reporting arrearages to credit bureaus.**

(A) In general. ***Procedures (subject to safeguards pursuant to subparagraph (B))*** requiring the State to report periodically to consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) the name of any noncustodial parent who is delinquent in the payment of **support,** and the amount of overdue **support** owed by such parent.

(B) ***Safeguards. Procedures ensuring that,*** in carrying out subparagraph (A), information with respect to a noncustodial parent is reported--

(i) ***only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and*** . . .

(9) **Procedures** which require that any payment or installment of **support** under any **child support** order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)--

(A) a **judgment by operation of law,** with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) **entitled as a judgment to full faith and credit in such State and in any other State,** and

. . .

(12) Locator information from interstate networks. Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

. . .

(B) High-volume automated administrative enforcement. In this part [42 USCS §§ 651 et seq.], the term "**high-volume automated administrative enforcement**", in interstate cases, means, on request of another State, the **identification by a State**, through **automated data matches with financial institutions** and other entities where assets may be found, of assets owned by persons who owe **child support** in other States, and the seizure of such assets by the State, through levy or other appropriate processes.

. . .

(17) ***Financial institution data matches.***

(A) In general. Procedures under which the **State agency** shall **enter into agreements** with **financial institutions** doing business in the State--

(i) to **develop and operate**, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a **data match system**, using automated data exchanges to the maximum extent feasible, in which ***each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number***; and

(ii) **in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph** (4).

(c) **Expedited procedures.** The **procedures** specified in this subsection are the following:

(1) **Administrative action by State agency.** Procedures which give the **State agency** the **authority to take the following actions relating to** establishment of paternity or to establishment, modification, or **enforcement of support**

orders, **without the necessity of obtaining an order from any other judicial or administrative tribunal**, and to recognize and enforce the authority of State agencies of other States to take the following actions:

. . .

(D) **Access to information contained in certain records. To obtain access**, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, **to information contained in the following records (including automated access, in the case of records maintained in automated data bases):**

(i) Records of other State and local government agencies, including--

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

(ii) **Certain records held by private entities with respect to individuals who owe or are owed support (or against or with respect to whom a support obligation is sought), consisting of--**

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an

administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

. . .

(G) Securing assets. **In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by--**

(i) intercepting or seizing periodic or lump-sum payments from--

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) ***attaching and seizing assets of the obligor held in financial institutions;***

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) and, in appropriate cases, to force sale of property and distribution of proceeds.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal. [Italics, underline, and bold added.]

IV.
THE CALIFORNIA PLAN - CHILD SUPPORT ENFORCEMENT

Child Support Enforcement Fairness Act of 2000
Purpose

Stats 1999 ch 653 provides:
SECTION 1.

(a) This act shall be referred to as the *Child Support Enforcement Fairness Act of 2000.*

(b) **The Legislature finds and declares as follows:**

(1) *The efficient and fair enforcement of child support orders is essential to ensuring compliance with those orders and respect for the administration of justice.*

(2) **A large number of child support orders are obtained by a default judgment.** In one study by the Judicial Council, ***more than 70 percent of all child support orders studied were obtained by default judgment.*** Very often, by the time a support obligor receives actual notice of the support order, the accumulated amount of arrearages totals tens of thousands of dollars. These arrearages amounts, particularly for a low wage earner, are a significant obstacle to good faith compliance. ***Ensuring prompt, actual notice of a child support obligation will prevent the accumulation of large amounts of arrearages and encourage greater timely compliance.***

(3) ***Thousands of individuals each year are mistakenly identified as being liable for child support actions. As a result of that action, the ability to earn a living is severely impaired, assets are seized, and family relationships are often destroyed. It is the moral, legal, and ethical obligation of all enforcement agencies to take prompt action to recognize those cases where a person is mistakenly identified as a support obligor in order to minimize the harm and correct any injustice to that person.*** [Italics, underline, and bold added.]

Cal Fam Code § 5601 (2003): **Registration by local child support agency** responsible for enforcement of support order; Filing of documents as registration; **Service** of copies of documents; **Notice;** Registration of other orders

(a) ***When the local child support agency is responsible for the enforcement of a support order pursuant to Section 17400,*** the ***local child support agency may register a support orde***r made in another county by utilizing the procedures set forth in Section 5602 or by filing all of the

following in the superior court of his or her county:

(1) An endorsed file copy of the most recent support order or a copy thereof.

(2) A statement of arrearages, including an accounting of amounts ordered and paid each month, together with any added costs, fees, and interest.

(3) A statement prepared by the local child support agency showing the post office address of the local child support agency, the last known place of residence or post office address of the obligor; the most recent address of the obligor set forth in the licensing records of the Department of Motor Vehicles, if known; and a list of other states and counties in California that are known to the local child support agency in which the original order of support and any modifications are registered.

(b) The **filing of the documents** described in subdivision (a) **constitutes registration** under this chapter.

(c) **Promptly upon registration, the local child support agency** shall, in compliance with the requirements of Section 1013 of the Code of Civil Procedure, or in any other manner as provided by law, ***serve the obligor with copies of the documents*** described in subdivision (a). [Italics and bold added.]

Cal Fam Code § 17400 (2003): **Obligation of county to maintain local child support agency**; Actions brought by agency; Summons, complaint, and answer forms; Outreach program; Order for temporary support; "Enforcing obligations"; Intervention by agency

(a) **Each county shall maintain a local child support agency,** as specified in Section 17304, that shall have the **responsibility for promptly and effectively** establishing, modifying, and **enforcing child support obligations,** including medical support, enforcing spousal support orders ***established by a court of competent jurisdiction,*** and determining paternity in the case of a child born out of wedlock. The local **child support agency shall take appropriate action,** including criminal action in

cooperation with the district attorneys, to establish, modify, and **enforce child support** and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, ***when requested, shall take the same actions on behalf of a child who is not receiving public assistance***, including Medi-Cal. [Italics, underline, and bold added.]

Cal Fam Code § 17404 (2003): **Parties to actions**; Hearing and judgment; Pleadings; Actions under other code provisions; Independent action to modify support order

(a) Notwithstanding any other statute, in any action brought by the local child support agency for the support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. The parent who has requested or is receiving support enforcement services of the local child support agency shall not be a necessary party to the action but may be subpoenaed as a witness. . .

(b) Judgment in an action brought pursuant to this section, and **in an action brought pursuant to Section 17402**, if at issue, **may be rendered pursuant to a noticed motion**, that shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion. . .

(e)(2) **Notice of the parent's status as a party shall be given to the parent by the local child support agency in conjunction with the notice required by subdivision (e) of Section 17406. . .**

(e)(4) **The parent who has requested** or is receiving support enforcement services of the local child support agency **is a party to an action brought under this section for issues relating to the support . . .** [Italics and bold added.]

Cal Fam Code § 17400 (2003): **Obligation of county to maintain local child support agency;** Actions brought by agency; Summons, complaint, and answer forms; Outreach

program; Order for temporary support; "**Enforcing obligations**"; Intervention by agency

. . .

(h) As used in this article, "**enforcing obligations**" includes, but is not limited to, (1) the use **of all interception and notification systems** operated by the department for the purposes of aiding in the enforcement of support obligations . . . ***(5) the transfer of child support delinquencies to the Franchise Tax Board under subdivision (c) of Section 17500 in support of the local child support agency.***

(i) The local child support agency shall comply with all regulations and directives established by the department that set time standards for responding to requests for assistance in locating noncustodial parents, establishing paternity, establishing child support awards, and ***collecting child support payments***. [Italics, underline, and bold added.]

Cal Rev & Tax Code § 19271 (2001)

(a)(1) For purposes of this article:

"Child support delinquency" means a delinquency defined in Section 17501 of the Family Code.

"Earnings" may include the items described in Section 5206 of the Family Code.

(a)(2) In order to manage the growth in the number of delinquencies transferred, the Franchise Tax Board may phase in the transfers over a period of 36 months ending on December 31, 2002. The Legislature anticipates that the Franchise Tax Board's systems necessary to accommodate the augmented collection activities will be operational by July 1, 2001. The Franchise Tax Board shall work with the Department of Child Support Services to coordinate the phasein, focusing on needed coordination with the transition of the local child support agency in each county from the office of the district attorney to the new county department of child support services.

(a)(3) At least 20 days prior to the date that the Franchise Tax Board commences collection action under this article, the Franchise Tax Board shall mail notice of the amount due to the obligated parent at the last known address and advise the obligated parent that failure to pay will result in collection action. If the obligated parent disagrees with the amount due, the obligated parent shall be instructed to contact the local child support agency to resolve the disagreement.

(b)(1)

Except as otherwise provided in subparagraph (B), when a delinquency is transferred to the Franchise Tax Board pursuant to Section 17501 of the Family Code, the amount of the child support delinquency shall be collected by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, except that issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes is prohibited. Any levy or other withholding of earnings of an employee by the Franchise Tax Board shall be made accordance with Section 5246 of the Family Code. Any other law providing for the collection of a delinquent personal income tax liability shall apply to any delinquency transferred under Section 17501 of the Family Code in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

When a delinquency is transferred to the Franchise Tax Board pursuant to Section 17501 of the Family Code, or at any time thereafter, if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquent personal income

tax liability, until the child support delinquency is paid in full. At any time, however, the Franchise Tax Board may mail any other notice to the taxobligor for voluntary payment of the delinquent personal income tax liability if the Franchise Tax Board determines that collection of the delinquent personal income tax liability will not jeopardize collection of the child support delinquency. However , the Franchise Tax Board may engage in the collection of a delinquent personal income tax liability if the obligor has entered into a payment agreement for the child support delinquency and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquent personal income tax liability would not jeopardize payments under the child support payment agreement.

For purposes of subparagraph (B):

"Involuntary collection action "includes those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

"Delinquent personal income tax liability" means any taxes, additions to tax, penalties, interest, fees, or other related amounts due and payable under Part 10 (commencing with Section 17001) or this part.

"Voluntary payment" means any payment made by obligated parents in response to any notice for voluntary payment mailed by the Franchise Tax Board.

(b)(2) Any compensation, fee, commission, expense, or any other fee for service incurred by the Franchise Tax Board in the collection of a child support delinquency authorized under this article shall not be an obligation of, or collected from, the obligated parent. A transferred child support delinquency shall be final and due and payable to the State of California upon written notice to the obligated parent by the Franchise Tax Board.

(b)(3) For purposes of administering this article:

This chapter and Chapter 7 (commencing with Section 19501) shall apply, except as otherwise provided by this article.

Any services, information, or enforcement remedies available to a local child support agency or the Title IV-D agency in collecting child support delinquencies or locating absent or noncustodial parents shall be available to the Franchise Tax Board for purposes of collecting child support delinquencies under this article, including, but not limited to, any information that may be disclosed by the Franchise Tax Board to the California Parent Locator Service under Section 19548. However, in no event shall the Franchise Tax Board take any additional enforcement remedies if a court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the parent is in compliance with that order.

A request by the Franchise Tax Board for information from a financial institution shall be treated in the same manner and to the same extent as a request for information from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code for purposes of Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code (relating to governmental access to financial records), notwithstanding any other provision of law which is inconsistent or contrary to this paragraph.

The amount to be withheld in an order and levy to collect child support delinquencies under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure is the amount required to be withheld pursuant to an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

Nothing in this article shall be construed to modify the tax intercept provisions of Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Part 2 of the Code of Civil Procedure.

(c) Interest on the delinquency shall be computed pursuant to Section 685.010 of the Code of Civil Procedure.
(d)(1) In no event shall a collection under this article be construed to be a payment of income taxes imposed under this part.
(d)(2) In the event an obligated parent overpays a liability imposed under this part, the overpayment shall not be credited against any delinquency collected pursuant to this article. In the event an overpayment of a liability imposed under this part is offset and distributed to a local child support agency pursuant to Sections 12419.3 and 12419.5 of the Government Code or Section 708.740 of the Code of Civil Procedure, and thereby reduces the amount of the referred delinquency, the local child support agency shall immediately notify the Franchise Tax Board of that reduction, unless the Franchise Tax Board directs otherwise.
(e)(1) The Franchise Tax Board shall administer this article, in conjunction with regulations adopted by the Department of Child Support Services in consultation with the Franchise Tax Board, including those set forth in Section 17306 of the Family
Code.
(e)(2) The Franchise Tax Board may transfer to or allow a local child support agency to retain a child support delinquency for a specified purpose for enforcement and collection where the Franchise Tax Board determines, pursuant to regulations established by the Department of Child Support Services, that the transfer or retention of the delinquency for the purpose so specified will enhance the collectibility of the delinquency.
(e)(3) The Franchise Tax Board, in coordination with the local child support agency, shall seek full compliance by the obligor with the child support order. The Franchise Tax Board, in coordination with the local child support agency and the Department of Child Support Services, shall pursue resolution of any issues regarding wage assignments and shall modify or replace as necessary any

administratively county-issued wage assignments to achieve total resolution of the child support obligation.
(f) Except as otherwise provided in this article, any child support delinquency transferred to the Franchise Tax Board pursuant to this article shall be treated as a child support delinquency for all other purposes, and any collection action by the local child support agency or the Franchise Tax Board with respect to any delinquency referred pursuant to this article shall have the same priority against attachment, execution, assignment, or other collection action as is provided by any other provision of state law.
(g) Except as otherwise specifically provided in subparagraph (B) of paragraph (1) of subdivision (b), the child support collection activities authorized by this article shall not interfere with the primary mission of the Franchise Tax Board to fairly and efficiently administer the Revenue and Taxation Code for which it is responsible.
(h) Information disclosed to the Franchise Tax Board shall be considered information that may be disclosed by the Franchise Tax Board under the authority of Section 19548 and may be disseminated by the Franchise Tax Board accordingly for the purposes specified in Sections 17505 and 17506 of the Family Code (in accordance with, and to the extent permitted by, Section 17514 of the Family Code and any other state or federal law).
(i) A local child support agency may not apply to the Department of Child Support Services for an exemption from the transfer of responsibilities and authorities to the Franchise Tax Board under the Family Code or participation under Section 19271.6.
(j) Except in those cases meeting the specified circumstances described in the regulations and in accordance with the process prescribed in paragraph (2) of subdivision (d) of Section 17501 of the Family Code, a local child support agency shall not withdraw, rescind, or otherwise recall the transfer of a child support delinquency transferred to the Franchise Tax Board.

Cal Fam Code § 17406 (2003): Actions involving paternity or support; **Notice of hearing**

. . .

(e) The local child support agency or, if appropriate, the Attorney General shall serve a copy of the complaint for paternity or support, or both, on recipients of support services under Section 17400, as specified in paragraph (2) of subdivision (e) of Section 17404. A **notice** shall accompany the complaint that informs the recipient that the local child support agency or Attorney General may enter into a stipulated order resolving the complaint, and that the recipient shall assist the prosecuting attorney, by sending all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f)(1)(A) The local child support agency or Attorney General shall provide written notice to recipients of services under Section 17400 of the initial date and time, and purpose of every hearing in a civil action for paternity or support. . .

(f)(5) ***The local child support agency or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the local child support agency or Attorney General has current addresses for all parties to the child support action. . .***

(l) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 17400 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person. [Italics, underline, and bold added.]

Cal Fam Code § 17430 **(2003)**: Failure to answer or appear; Additional information and amended proposed judgment.

(a) Notwithstanding any other provision of law, in any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, a judgment shall be entered without hearing, without the presentation of any

other evidence or further notice to the defendant, upon the filing of proof of service by the local child support agency evidencing that more than 30 days have passed since the simplified summons and complaint, proposed judgment, blank answer, blank income and expense declaration, and all notices required by this division were served on the defendant. . .
(d) Upon entry of the judgment, the clerk of the court shall provide a conformed copy of the judgment to the local child support agency. The local child support agency shall mail by first-class mail, postage prepaid, a notice of entry of judgment by default and a copy of the judgment to the defendant to the address where he or she was served with the summons and complaint and last known address if different from that address. [Italics and bold added.]

Cal Fam Code § 215 (2003): **Service of notice prerequisite to validity of modification of judgment or subsequent order**
After entry of a judgment of dissolution of marriage, nullity of marriage, legal separation of the parties, or paternity, or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior **notice** otherwise required to be given to a party to the proceeding is served, in the same manner as the **notice** is otherwise permitted by law to be served, upon the party. For the purposes of this section, service upon the attorney of record is not sufficient. [Italics and bold added.]

OTHER CALIFORNIA ADMINISTRATIVE CHILD SUPPORT ENFORCEMENT PROVISIONS

Cal Fam Code § 17401 (2003): Requirements upon **receipt of obligor's address.**

If the parent who is receiving support enforcement services provides to the local child support agency substantial, credible, information regarding the residence or work address of the support obligor, the agency shall initiate an establishment or enforcement action and serve the defendant, if service is required, within 60 days and inform the parent in writing when those actions have been taken. . . **The requirements of this section shall be in addition to the time standards established by the Department of Child Support Services pursuant to subdivision (l) of Section 17400.** [Italics and bold added.]

Cal Fam Code § 4701 (2003): Child support delinquency reporting

. . .

(d)(2) ***Before the initial reporting of a court-ordered child support obligation or a delinquent payment, the local child support agency shall attempt to notify the obligor parent of the proposed action and give 30 days to contest in writing the accuracy of the information, or to pay the arrearage, if any, in compliance with the due process requirements of the laws of this state.***

(e) ***The department and the local child support agencies are responsible for the accuracy of information provided pursuant to this section, and the information shall be based upon the data available at the time the information is provided. Each of these organizations and the credit reporting agencies shall follow reasonable procedures to ensure maximum possible accuracy of the information provided. Neither the department, nor the local child support agencies are liable for any consequences of the failure of a parent to contest the accuracy of the information within the time allowed under paragraph (2) of subdivision (d).*** [Italics, underline, and bold added.]

Cal Fam Code § 17520 (2003): Consolidated lists of persons; License renewals; Review procedures; Report to Legislature; Rules and regulations; Forms; Use of

information; Suspension or revocation of driver's license; Severability

. . .

(a)(3) **"Certified list" means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.**

(a)(4) **"Compliance with a judgment or order for support"** means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(b) **The local child support agency shall maintain a *list of those persons* included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. *The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the***

list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis. . .

(g)(1) *Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.* [Italics, underline, and bold added.]

Cal Fam Code § 17522 (2003): **Levies**

(a) Notwithstanding any other law, **if any support obligor is delinquent in the payment of support** for at least 30 days and the local child support agency is enforcing the support obligation pursuant to Section 17400, **the local child support agency may collect the delinquency or enforce any lien by levy served on all persons having in their possession, or who will have in their possession or under their control, any credits or personal property belonging to the delinquent support obligor, or who owe any debt to the obligor at the time they receive the notice of levy.**

(b) *A levy may be issued by a local child support agency for a support obligation that accrued under a court order or judgment if the obligor had notice of the accrued support arrearage as provided in this section, and did not make a timely request for review.*

(c) *The notice requirement shall be satisfied by the local child support agency sending a statement of support arrearages to the obligor at the obligor's last known address by first-class mail, postage prepaid. The notice shall advise the obligor of the amount of the support*

arrearage. The notice shall advise the obligor that the obligor may have the arrearage determination reviewed by administrative procedures and state how the review may be obtained. The local child support agency shall conduct the review pursuant to this section in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The notice shall also advise the obligor of his or her right to seek a judicial determination of arrearages pursuant to Section 17526 and shall include a form to be filed with the court to request a judicial determination of arrearages. . .
(g) *If the levy is made on a deposit or credits or personal property in the possession or under the control of a bank, savings and loan association, or other financial institution as defined by Section 669A(d)(1) of Title 42 of the United States Code, the notice of levy may be delivered or mailed to a centralized location designated by the bank, savings and loan association, or other financial institution pursuant to Section 689.040 of the Code of Civil Procedure.* [Italics, underline, and bold added.]

Cal Fam Code § 17524 (2003): **Statement of arrearages**
. . .
(c) *For all cases opened by the district attorney on or before December 31, 1995, the local child support agency shall enforce only arrearages that have been based upon a statement of arrearages signed under penalty of perjury or where the local child support agency has some other reasonable basis for believing the amount of claimed arrearages to be correct.* [Italics, underline, and bold added.]

Cal Fam Code § 17526 (2003): **Review and judicial determination of arrearages**
(a) *Upon request of an obligor or obligee, the local child support agency shall review the amount of arrearages alleged in a statement of arrearages that may be submitted to the local child support agency by an applicant for child support enforcement services. The local child support*

agency shall complete the review in the same manner and pursuant to the same timeframes as a complaint submitted pursuant to Section 17800. In the review, the local child support agency shall consider all evidence and defenses submitted by either parent on the issues of the amount of support paid or owed. [Italics, underline, and bold added.]

Cal Fam Code § 17800 (2003): **Complaint resolution process**

Each local child support agency shall maintain a complaint resolution process. The department shall specify by regulation, no later than July 1, 2001, uniform forms and procedures that each local child support agency shall use in resolving all complaints received from custodial and noncustodial parents. A complaint shall be made within 90 days after the custodial or noncustodial parent affected knew or should have known of the child support action complained of. The local child support agency shall provide a written resolution of the complaint within 30 days of the receipt of the complaint. [Italics, underline, and bold added.]